TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~342.~~ 139

THE EUREKA CLOTHES WRINGING MACHINE COMPANY, APPELLANT,

vs.

THE BAILEY WASHING AND WRINGING MACHINE COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

FILED DECEMBER 10, 1869.

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INDEX.

	Original.	Print.
Bill of complaint	5	1
Answer of the Eureka Clothes Wringing Machine Company	19	10
Samuel B. Rindge	23	13
Replication of the Bailey Washing and Wringing Machine Company to the answer of Eureka Clothes Wringing Machine Company	29	17
Replication of the Bailey Washing and Wringing Machine Company to the answer of S. B. Rindge	30	17
Decree for injunction nisi	30a	18
Agreement as to printing and evidence	30b	18
Decree for an account and reference to master	30c	18
Master's first report	30e	19
Recommitment to master	30f	19
Master's second report	30g	20
Final decree	30h	20
Appeal	30i	20
Certificate of clerk United States circuit court	145	95
Copy bond of appeal	147	95
PROOFS FOR COMPLAINANT.		
Deposition of Seldon A. Bailey	31	21
Seldon A. Bailey, (second)	56	37

	Original.	Print.
Deposition of Simeon S. Cook	49	33
W. C. Hibbard	58	38
David Lyman	53	35
William G. Russell	57	38
Hervey Waters	66	44
John P. Whipple	43	28
COMPLAINANT'S EXHIBITS.		
Exhibit A, license B. W. & W. M. Co. to E. C. W. M. Co	78	52
B, agreement (same parties)	80	53
C, John Allender reissued patent	70	46
E, assignment of John Allender patent to S. A. Bailey	74	49
F, assignment of John Allender patent to Bailey, Cook & Cook	76	50
G, assignment of John Allender patent to B. W. & W. M. Co.	77	51
H, act to incorporate the B. W. & W. M. Co	69	45
K, letter, Alexander to Cook, May 17, 1866	85	56
L, letter, B. W. & W. M. Co. to E. C. W. M. Co., May 19, 1866	86	57
M, letter, Alexander to Bailey, December 23, 1865	84	56
N, letter, Tower to Bailey, March 17, 1865	84	56
O, letter, Alexander to Cook, March 27, 1866	85	56
P, letter, Alexander to Cook, April 18, 1866	86	57
T, meeting of directors of Eureka Company, March 27, 1866	86	57
U, meeting of directors of Eureka Company, June 13, 1866	87	57
PROOFS FOR RESPONDENT.		
Deposition of T. J. Alexander	87	58
T. J. Alexander, (second)	91	60
C. W. Baldwin	104	69
Samuel B. Rindge	92	61
L. L. Tower	111	74
Francis C. Treadwell, jr	113	75
RESPONDENT'S EXHIBITS.		
Exhibit 1, check, Alexander to Cook	136	90
2, vote of directors of Eureka Company, June 25, 1864	136	91
3, Underhill patent	137	91
4, Jessop patent	140	93
5 to 11, description of	135	90
12 to 19, to be used, but not printed	136	90

3 UNITED STATES OF AMERICA,
Massachusetts District, ss:

At a circuit court of the United States of America for the first circuit, begun and holden at Boston, within and for the district of Massachusetts, on Friday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and sixty-nine, before the Honorable Nathan Clifford, associate justice, and the Honorable John Lowell, district judge.

BAILEY WASHING AND WRINGING MACHINE Co., complainant,
vs.
EUREKA CLOTHES WRINGING MACHINE Co. et al., respondents.
} In equity.

4 The bill of complaint in this cause was filed in the clerk's office on the fourteenth day of January, A. D. 1867, and was duly entered at the October term of this court, A. D. 1866, and is in the words and figures following, namely:

5 *Bill of complaint.—Filed Jan.* 14, 1867.

Circuit court of the United States, district of Massachusetts.

BAILEY WASHING AND WRINGING MACHINE CO.
vs.
EUREKA CLOTHES WRINGING MACHINE CO. ET AL.
} In equity.

To the honorable justices of the circuit court of the United States for the district of Massachusetts.

The bill of complaint of the Bailey Washing and Wringing Machine Company, a corporation duly established under the laws of Rhode Island, and having their usual place of busines in Woonsocket, in Rhode Island, exhibited against the Eureka Clothes Wringing Machine Company, a corporation organized under the laws of Massachusetts, and having its usual place of business at Waltham, in our said district of Massachusetts, and Samuel B. Rindge, of Boston, in the State of Massachusetts.

Humbly complaining, your orators inform your honors that John Allender, late of New London, Connecticut, on the eleventh day of January, eighteen hundred and fifty-nine, upon due application therefor, did obtain letters-patent of the United States for certain new and useful improvements on an improved wringing machine, fully described
6 in said letters-patent, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior, and countersigned by the Commissioner of Patents for the United States, bearing date the year and day aforesaid, whereby there was granted and secured unto the said John Allender, his heirs, administrators, or assigns, or intended so to be, for the term of fourteen years from and after the date of said letters-patent, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention and improvements as set forth in said letters-patent, which are now remaining on record in the Patent Office of the United States, and, by virtue whereof, said John Allender became and was the sole

owner of all the rights and privileges granted and secured, or intended to be granted and secured, in and by said letters-patent.

And your orators further show that the said John Allenfler afterwards died in May, A. D. eighteen hundred and sixty-three, at New London, Connecticut, and Thomas Allender was afterwards duly qualified as executor of the last will and testament of the said John Allender, and, being so qualified, by an instrument in writing, assigned to one Seldon A. Bailey all the right, title, and interest which the said John Allender in his lifetime had in and to the letters-patent and the invention aforesaid; which instrument was duly recorded at the Patent Office of the United States.

And your orators further show that, on the sixteenth day of December, in the year one thousand eight hundred and sixty-three, the said Seldon A. Bailey, by an instrument in writing, assigned all his right, title, and interest in the said letters-patent, and the invention secured thereby, to Seldon A. Bailey, Simeon S. Cook, and Benedict M. Cook, to hold in trust for the firm or copartnership known as Bailey, Cook & Co.; which assignment was duly recorded in the Patent Office of the United States.

And your orators further show that thereafter the said trustees, being assignees as aforesaid, having for good and lawful cause surrendered the said letters-patent to the Commissioner of Patents, and having made due application for new letters-patent on an amended description and specification duly filed by them, and having in all things complied with the act of Congress in such case made and provided, did, on the twenty-eighth of June, A. D. eighteen hundred and sixty-four,
7 obtain new letters-patent for the same invention for the term of fourteen years from the eleventh day of January, A. D. eighteen hundred and fifty-nine; which letters-patent were duly granted according to law to the said Seldon A. Bailey, Simeon S. Cook, and Benedict M. Cook, assignees as aforesaid, their heirs, administrators, or assigns, and were issued in due form of law, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior, and countersigned by the Commissioner of Patents, and bearing date the twenty-eighth day of June, A. D. eighteen hundred and sixty-four.

And your orators further show that thereafter the said Seldon A. Bailey, Simeon S. Cook, and Benedict M. Cook, assignees as aforesaid, having for good and lawful cause surrendered the said reissued letters-patent to the Commissioner of Patents, and having made due application for new letters-patent upon an amended specification and description duly filed by them, and having in all things complied with the act of Congress in such case made and provided, and having requested the Commissioner of Patents that the same, when reissued, should be reissued to them, they, the said Seldon A. Bailey, Simeon S. Cook, and Benedict M. Cook, being assignees as aforesaid, did obtain new letters-patent for the same invention for the term of fourteen years from the eleventh day of January, A. D. eighteen hundred and fifty-nine; which letters-patent were duly granted according to law, and were issued November eighth, A. D. eighteen hundred and sixty-four.

And your orators further show that the said Seldon A. Bailey, Simeon S. Cook, and Benedict M. Cook, having for good and lawful cause surrendered the said last reissued letters-patent to the Commissioner of Patents, and having made due application for new letters-patent on an amended description and specification duly filed by them, and having in all things complied with the act of Congress in such case made and provided, did, on the eighteenth day of April, A. D. eighteen

hundred and sixty-five, obtain new letters-patent for the term of fourteen years from the eleventh day of January, A. D. eighteen hundred and fifty-nine; which letters-patent were duly granted according to law to said Seldon A. Bailey, Simeon S. Cook, and Benedict M. Cook, assignees as aforesaid, their heirs, administrators, or assigns, and were issued in due form of law, and bearing date the eighteenth day of April, A. D. eighteen hundred and sixty-five, and numbered reissue No. 1934.

8 And your orators further show that on the twenty-second of July, A. D. eighteen hundred and sixty-five, the said Seldon A. Bailey, Simeon S. Cook, and Benedict M. Cook, by an instrument in writing, assigned to your orators all their rights, title, and interest in and to the said letters-patent, reissued as aforesaid, and in and to the invention of the said John Allender, for which the said letters-patent were granted; which said assignments were duly recorded in the Patent Office of the United States.

And your orators further show to your honor that after the making of the aforesaid assignment to them your orators became, and now are, and ever since have been, the sole and exclusive owners of said letters-patent and inventions, and of all the rights and privileges granted and secured, or intended to be granted and secured, thereby.

And your orators further show that, after the said reissues and assignments as aforesaid, they brought and exhibited their bill of complaint in the circuit court of the United States for this district against Samuel E. Slocum of said district, for an infringement of said letters-patent, and that they prosecuted said suit to final judgment and obtained a decree for a perpetual injunction against the said Slocum in the month of March, A. D. eighteen hundred and sixty-six.

And your orators further show that the defendants in this suit had due notice of the reissues before stated, and of the assignments to your orators; and your orators notified them that they must either take a license to manufacture machines under said patent, or be sued for infringement; and the defendants conferred with your orators and their agent, and requested to see the patents of your orators, and drafts of licenses; which request your orators complied with, and the defendants kept putting your orators off by various pretences, such as that they were not manufacturing many machines, and that they were undecided whether to go on with the manufacture of these machines, or to stop entirely.

And your orators show that their agent had frequent interviews with the defendants as to this matter of a license, which extended over a period of several months, and that the defendants, after such due examination and inquiry, requested your orators to grant them, the Eureka Clothes Wringing Machine Company, a license to make and vend the said invention of John Allender. On the twenty-fourth of March, 1866,

9 defendants deposited with your orators a sample machine, which sample and machine your orators are ready to produce as the court may direct; on the same day said company received and took from these orators a license to use, in the manufacture of machines similar to the sample referred to above, such parts of the invention in the said letters-patent heretofore referred to as are represented in said sample, and no other, and made an indenture with your orators, which is hereto annexed and marked A, and made part of this bill, whereby the defendants' said company covenanted, as will be seen by said exhibit: First, that they would submit unto your orators, upon the fifth of every month, a statement under oath of the number of machines manufactured by them

during the preceding month, and would pay at the same time to your orators a tariff of fifty cents on each machine so constructed by them during the preceding month. Second, that they would keep an accurate account of all machines manufactured by them, and that their books should be open to the inspection of your orators at all times. Third, that they would not directly or indirectly violate or infringe upon the said reissued patent originally granted to the said John Allender as aforesaid during the continuance of the same or the continuance of any reissues, renewals, or extensions thereof, and that they would use all reasonable efforts by giving information to your orators of any infringement thereof known to it. Fourth, that if the defendants should violate, wilfully and knowingly, any of the conditions of this agreement, or infringe upon said reissued patent, they should have no further rights under the same, although they should be bound thereby.

Your orators further show that by the terms of said agreement it was made binding upon the several parties during the remaining term of said patent, or any renewal or extension of the same.

And your orators show unto your honors that the parties duly executed and delivered the said indenture marked A; and upon the same day and year they entered into and executed another agreement marked B, and hereto annexed and made a part of this bill, whereby the company defendants agreed with your orators that the license heretofore set out was granted upon condition that this agreement marked B should be entered into.

And your orators show, it was agreed among other things by said paper marked B, that the price of the several wringing machines therein described should be respectively six dollars and fifty cents, seven dollars and fifty cents, and ten dollars, as will more fully appear by said agreement hereto annexed, with numerous other covenants not here set out, but for a description of which reference is made to said Exhibit B.

And your orators further show that said agreements and indentures marked A and B were duly executed by your orators of the one part, and by the Eureka Clothes Wringing Machine Company, by their agent and treasurer, of the other, and the said indentures were duly delivered in duplicate, one to the other, and thereupon the company defendants began to manufacture, under the license aforesaid, wringing machines similar to the sample referred to in Exhibit A.

And your orators further show that, on the nineteenth of May, eighteen hundred and sixty-six, the said company defendants accounted with and paid to your orators the sum of fifty dollars as and for a tariff upon one hundred machines manufactured by them under said agreement. Your orators show that under and by virtue of said agreement the said company defendants became liable and agreed to render on the fifth of every month to your orators a sworn statement of the number of machines manufactured by them in the preceding month, and also at the same time to pay to your orators the sum of fifty cents for each and every machine manufactured under said agreement. And your orators further show that their agents went to the place of manufacture of the company defendants on the nineteenth of December, eighteen hundred and sixty-six, and saw a large number of hands at work constructing machines similar to the sample machine referred to in Exhibit A, and he saw the agent of the company defendants, who said he had orders not to render any account to your orators, and he declined so to do. And your orators sent an agent there afterwards, who called on the defendant Rindge, the treasurer of the defendants' company, and demanded

that the said company should render their account as they had agreed, and was there told by said treasurer that they, meaning the said company defendants, had decided not to make any returns or pay any tariff. And your orators have sent to the said company, monthly, since the making of said agreement, blank forms for them to make their returns on, but the defendants have made none since said nineteenth of May, eighteen hundred and sixty-six, nor have they ever paid anything by way of tariff, except the fifty dollars heretofore stated.

11 And your orators further show that the said company defendants have manufactured a large number of machines similar to the sample machine referred to in Exhibit A, since they executed said agreements annexed and marked A, B, and since their said payment of May nineteenth, eighteen hundred and sixty-six; and they are still manufacturing them, but to what extent your orators are unable to say, nor do they know how many the defendants have manufactured since said agreements were executed, but they believe that a large number have been manufactured by them; and that the defendants have withheld from and not delivered to your orators any account of the number which they have so manufactured since the making of this agreement, except the one hundred machines they paid for May nineteenth, eighteen hundred and sixty-six, as before stated, nor have they paid the royalty they agreed to for any but the said one hundred machines. And your orator believes and charges that the books of said company are in the control of the defendants. And your orator believes that the defendant company intends to continue to manufacture wringing machines like sample A, and to refuse and withhold from your orator the account of the same, and the license money accruing thereon, in defiance of his said covenants and agreements.

And your orator represents that he has entered into similar licenses and agreements with other parties, and that the disregard of the rights of your orator under the covenants aforesaid by the defendant, and his avowed determination to continue the same unlawful acts, in disregard and defiance of the rights of your orator, has the effect to encourage and induce others to venture to disregard the rights of the orators under like covenants. And your orator represents that such acts and doings are contrary to equity and good conscience; and inasmuch as your orators can have no adequate relief, except in a court of equity, where matters of this kind are cognizable, to the end, therefore, that the defendants may, if they can, show cause why your orators should not have the relief prayed for, and may, upon their several and corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, and direct, and perfect answers make to the premises, and to all the several matters hereinbefore stated and charged, as fully and particularly as if separately

12 and severally interrogated as to each and every of said matters, and may be compelled to render a just and true account of all the machines, like the sample aforesaid, by the said company, delivered to your orator, and to account for and pay to your orator fifty cents for each and every such machine so manufactured by them, except the one hundred already paid for, and the damages suffered by your orators from the aforesaid unlawful acts, and to produce the book of the said company for the inspection of your orator; and your orator prays that the said defendant, the Eureka Clothes Wringing Machine Company, and the said Rindge, and each of them, and their officers, servants, agents, workmen, and attorney, may be restrained and enjoined by the order and injunction of this honorable court from directly or indirectly

making or constructing any machine, or proceeding to make, similar to the sample A, until the said defendant company shall, on the oaths of their proper officers, render a true account of the number of machines by them heretofore manufactured similar to said sample, and pay to the orator the tariff of fifty cents each on the same, according to his said agreement, and shall produce and open his books of accounts for the inspection of the orator, according to said agreement; and that the said defendant may be decreed to pay the costs of this suit; and that your orator may have such other and further relief as to this honorable court shall seem meet, and as shall be agreeable to equity:

May it please your honor to grant unto your orator the writ of injunction issuing out of this honorable court and under its seal, commanding, enjoining, and restraining the said defendants, the Eureka Clothes Wringing Machine Company, and the said Samuel B. Rindge, and each of them, and each of their officers, agents, servants, and attorneys, as is hereinbefore prayed in their behalf.

May it please your honor to grant unto your orator the writ of subpœna, issuing out of and under the seal of this honorable court, directed to the said defendants, commanding them, by a certain day and under a certain penalty, to be and appear in this honorable court, then and there to answer the premises, and to stand to and abide by such order and decree as may be made against them. And your orators will ever pray, etc.

S. A. BAILEY,
Ag't for Bailey Washing and Wringing Machine Co.

WOODBURY & INGALLS,
Solicitors for Compl'ts.

13 JAN. 14, 1867.

UNITED STATES OF AMERICA, *Massachusetts District:*

Personally appeared the within-named S. A. Bailey, and made oath that the statements of the foregoing bill of complaint, made of his own knowledge, are true, and as to other statements they are true according to the best of his information and belief.

Before me,

JOHN G. STETSON, *Clerk.*

[A.]

This indenture, made this twenty-fourth day of March, eighteen hundred and sixty-six, by and between the Bailey Washing and Wringing Machine Company, a chartered corporation, duly organized under the laws of the State of Rhode Island, and located at Woonsocket, R. I., on the first part, and the Eureka Clothes Wringing Machine Company, a corporation organized under the laws of Massachusetts, manufacturing and doing business in Waltham, State of Massachusetts, party of the second part, witnesseth:

That the party of the first part is the legal owner of a reissued patent, originally granted to John Allender, of New London, Connecticut, January eleventh, A. D. eighteen hundred and fifty-nine, and reissued on the eighteenth day of April, A. D. eighteen hundred and sixty-five, for an "improved washing and wringing machine," said reissued letters-patent being numbered 1934.

The party of the second part has applied to the party of the first part for a license to manufacture clothes wringers under the reissued John Allender patent aforesaid, according to or substantially like a sample

machine, which is marked Eureka, Oct. 1st, 1865, with ink, on the rollers, and deposited with the party of the first part.

And the party of the first part does hereby grant and convey unto the party of the second part a full and absolute right to use, in the manufacture of wringing machines for use or sale, such parts of the invention secured in the said reissued John Allender patent as are represented in said sample, and no others.

The rolls of such machines shall in no case be more than two inches in diameter or more than twelve inches in length. The sample
14 machine is what is called a tub machine; that is, it is to be attached to the side of a tub to be operated, and not to be attached to a bench. And it is understood that no license is granted under the said Allender patent to make, use, or sell any washing or wringing machines attached to a bench, and the parties to the second part agree that they will not make any washing or wringing machines attached to a bench.

And the party of the second part agree to submit to the party of the first part, on the fifth of every month, a statement, under oath, of the number of machines by it manufactured during the preceding month; and to pay at the same time to the party of the first part a tariff of fifty cents on each and every wringing machine by it constructed during the last-mentioned month.

And the party of the second part further agree to keep an accurate account of all wringing machines made by it, and that its books shall at all times be open for inspection by the party of the first part.

The party of the second part hereby covenant and agree with the party of the first part that they will not directly or indirectly violate or infringe upon the said reissued patent originally granted to the said John Allender as aforesaid, during the continuance of the same, or the continuance of any reissues, renewals, or extensions thereof; and that it will use all reasonable efforts, by giving information to said party of the first part, of any infringement thereof known to it.

If the said party of the second part shall wilfully and knowingly violate any of the conditions of this agreement, or infringe upon said reissued patent, it shall have no further rights upon the same, although it shall be bound thereby.

This agreement is binding upon the parties respectively, and upon their legal representatives, during the remaining term of said patent, or any renewal or extension of the same; but it is not to be assigned without the written consent of the party of the first part.

In witness whereof the said party of the first part have caused its seal to be hereunto affixed, and this instrument to be signed by S. A. Bailey, its general agent, thereto duly authorized; and the said party of the second part has affixed its seal and caused these presents to be signed by S. P. Rindge, its treasurer, thereunto duly authorized, this day and year first hereinabove written.

15 Bailey Washing and Wringing Machine Co.,
S. A. BAILEY, *General Agent.* [SEAL.]
Eureka Clothes Wringing Machine Co.,
By S. B. RINDGE, *Treasurer.* [SEAL.]

Executed and exchanged in the presence of—

The date first altered to March 24, 1866; the word Waltham substituted for Boston, and one written line erased, before signing; also S. B. Rindge substituted for L. L. Tower—

W. G. RUSSEL.

[B.]

This indenture, made this 24th day of March, 1866, by and between the Bailey Washing and Wringing Machine Company, a chartered corporation duly organized under the laws of the State of Rhode Island, and located at Woonsocket, R. I., of the first part, and the Eureka Clothes Wringing Machine Company, a corporation organized under the laws of Massachusetts, manfacturing and doing business in Waltham, State of Massachusetts, party of the second part, witnesseth:

That the party of the first part is the legal owner of a reissued patent, originally granted to John Allender, of New London, Connecticut, January 11, A. D. 1859, and reissued on the 18th day of April, A. D. 1865, for an "improved washing and wringing machine," said reissued letters-patent being numbered 1934.

The party of the second part has this day taken a license of the party of the first part under said reissued patent, which is referred to as if embodied in this agreement; and said license was granted on the conditions that the party of the second part should execute these presents.

Now, therefore, for the purpose of preventing a ruinous competition in the business, and to establish prices for the sale of wringing machines made by the party of the second part, so as to prevent any interference with the machines made by the parties of the first and second part, and by other licensees of the party of the first part, it is agreed as follows:

16 First. All the wringing machines made by the party of the second part, with rubber rolls of the length of eight and one-half inches, and of the diameter of one and five-eighths inches, or with rubber rolls under that size, in length or diameter, shall not be sold at less than six dollars and fifty cents each, at retail.

Second. All the wringing machines made by the party of the second part, with rubber rolls of the length of more than eight and one-half inches, and up to ten inches in length, and of the diameter of one and five-eighths inches, shall not be sold at less than seven dollars and fifty cents, at retail.

Third. All wringing machines made by the party of the second part, with rubber rolls of more than ten inches in length, and up to eleven inches, and of the diameter of one and three-fourths inches, shall not be sold at less than ten dollars, at retail.

It is understood that the above-named prices are for machines that use no cogs, or any other mechanical device, for compelling the rolls to turn together, except by friction of contact of the surface of the rolls. And the party of the second part agrees that it will not use cogs or any other mechanical device for compelling the rolls of machines to turn together, except by friction of contact of the surface of the rolls, except it take a license of the party of the first part, and pay an additional tariff of fifty cents on each and every machine by it made.

The changes of business may make it for the interests of all parties to change the price of wringing machines aforesaid, from time to time, and in such cases it is agreed that David Lyman, of Middlefield, Connecticut, and Lyman A. Cook, of Woonsocket, Rhode Island, who are hereby appointed umpires for the purpose, shall hear the views of all parties and decide whether any change shall be made in the prices; and their decision shall be indorsed on one part of this agreement, and shall be binding and conclusive upon all parties in the same manner as if it had been embraced in and made part of this agreement; and the prices

so fixed shall be the retail prices, below which the machines of the party of the second part shall not be sold. If the said umpires shall at any time fail to agree upon the prices to be established, they shall call in a third and disinterested person, satisfactory to both, and the decision of any two of such umpires shall be binding on the parties hereto. In case of the decease, inability, or refusal of either of the said umpires to act, then the Metropolitan Washing Machine Company, of Middletown, Connecticut, and the party of the first part, shall appoint another and disinterested person to act in his stead, which person shall be acceptable to the remaining umpire. And in case of the decease or permanent disability or refusal of both the said umpires to act, then the two last-named corporations shall call a meeting of all the licensees of the party of the first part, giving ten days' notice by mail to each; and the meeting so called shall appoint, by majority vote, two umpires, who shall have all the powers conferred herein on the said David Lyman and Lyman A. Cook.

17

It is agreed between the parties hereto that the basis upon which said umpires shall act in fixing the retail prices at which the machines of the party of the second part shall be sold shall be as follows, to wit:

1st. They shall add to the actual cost, in labor and material, of the manufacture of the machines the amount paid as tariffs under two certain reissued patents originally granted to John Young, said reissues dated January 6, 1863, the amount of tariff paid to the party of the first part, under the license first herein referred to, and the government tax; they shall then fix upon a retail price which will allow to dealers a discount of thirty per cent. from the retail price of such machines, and leave a profit of not less than ten per cent., nor greater than twenty five per cent., upon the costs and tariffs aforesaid.

2d. If, at any time during the continuance of this agreement, the maximum discount to be allowed to dealers by the parties hereto shall be less than thirty per cent., then said umpires shall base their prices upon such reduced discount instead of thirty per cent. as above.

3d. The party of the second part agree that it will not, directly or indirectly, sell, or permit to be sold, any machine at a price less than the prices fixed in this agreement, or hereafter established, as herein provided for.

4th. The party of the second part agree not to discount to any agent or dealer, who may purchase or sell its machines, a sum exceeding thirty per cent. upon the retail prices herein fixed, or hereafter established, as herein provided for; and the party of the first part agree that they will not make and sell machines, similar to those made by the party of the second part, at prices less than those fixed for the party of the second part, and to make no greater discount thereon to dealers than the discount herein allowed, except that they may manufacture machines on contract for parties licensed and bound by this agreement.

18

5th. If any agent or dealer shall sell said machines at prices less than those fixed in this agreement, or hereafter established, in the manner above provided, then the party of the first part, on receiving notice thereof, shall give notice to the party of the second part, and in such case the party of the second part shall not sell or supply machines, directly or indirectly, to such agent or dealer, and shall, by all means in his power, prevent such agent or dealer from buying or selling any more of said machines.

6th. If the party of the second part shall knowingly and wilfully sell, or allow to be sold, any machines at prices less than those fixed in this

agreement, or hereafter established, as aforesaid, or if the party of the second part shall receive notice from the party of the first part that any agent or dealer is selling at prices less than those fixed by this agreement, or hereafter established, and if the party of the second part, on the receipt of such notice, does not take the measures prescribed in article 5th of this agreement, then, the party of the second part shall forfeit and pay to the party of the first part the sum of ten dollars for each and every machine by it sold, either directly or indirectly, at prices less than those above fixed or hereafter established as above mentioned.

This agreement is binding upon the parties respectively, and upon their legal representatives, during the remaining term of said patent, or any renewal or extension of the same; but is not to be assigned without the written consent of the party of the first part.

In witness whereof the said party of the first part have caused its seal to be hereunto affixed, and this instrument to be signed by S. A. Bailey, its general agent, thereto duly authorized; and the said party of the second part has affixed its seal, and caused these presents to be signed by S. B. Rindge, its treasurer, thereunto duly authorized, this day and year first hereinbefore written.

19 Bailey Washing and Wringing Machine Co., [SEAL.]
S. A. BAILEY, *General Agent.*

Eureka Clothes Wringing Machine Co., [SEAL.]
By S. B. RINDGE, *Treasurer.*

Executed and exchanged in presence of—
The date being first altered to March 24, 1866, and the word Waltham substituted for Boston; also, S. B. Rindge substituted for L. L. Tower—
W. G. RUSSELL.

On the seventh day of March, A. D. 1867, the following answer was filed, namely:

Circuit court of the U. S., Massachusetts district.—In equity, October term, 1866.

THE BAILEY W. & W. M. CO.
vs.
THE EUREKA CLOTHES W. M. CO. ET AL.

Answer of the Eureka C. W. M. Co., one of the defendants, to the bill of complaint.

This defendant, reserving all manner of exception to the manifest errors in said bill contained, for answer thereto says that whether the plaintiff is a corporation duly established under the laws of the State of Rhode Island this defendant is ignorant, and prays that the plaintiff may be required to prove the same.

Answering further, admits that a patent was granted to John Allender on the 11th of January, 1859, but denies that said patent was for certain new and useful improvements on an improved wringing machine; and alleges that said patent was granted for an "improved roller for expressing water from clothes," clearly and distinctly described, claimed, and set forth in said patent as that part of the machine described therein, which the said Allender had invented, and desired to secure by letters-patent.

And, further answering, admits that said John Allender died in May,

1863, and that said Thomas Allender was appointed executor, as alleged in said bill; but whether said executor assigned to said Seldon
20 the interest which the said John Allender had in said patent, or whether said Seldon made the assignment mentioned in said bill to said Benedict & Simeon, or whether they and the said Bailey made the assignment in said bill mentioned to the plaintiff, as alleged in said bill, this defendant has no knowledge, information, or belief, and can neither admit or deny the allegations in said bill contained concerning the same.

And, further answering, this defendant says that it may be true that said patent was surrendered on the 28th June, 1864, and reissued letters-patent obtained bearing that date, and that said last-mentioned patent was surrendered, and new letters-patent, bearing date November 8, 1864, reissued therefor, and that said last-mentioned patent was surrendered, and reissued letters-patent, bearing date the 18th April, 1865, as alleged in said bill; but this defendant denies that said several letters-patent were surrendered for good and lawful cause, and alleges that they, and each of them, were surrendered that the said Seldon, Simeon & Benedict might claim a monopoly of things invented and known before the said John Allender made the improved roller described and claimed in said original patent of January 11, 1859, and things which neither the said John Allender, or any one on his behalf, in his lifetime ever pretended were invented by him, and for the purpose, also, of so expanding the claim in said patent that they might cover or embrace all other inventions or devices which have been or may be made to effect the same purpose.

This defendant, further answering, is ignorant of all the alleged proceedings against one Slocum, as stated in said bill, and can neither admit or deny the allegations concerning the same, and prays that the plaintiff may be required to prove the same, if material to the issues in this cause, against this defendant.

And, further answering, denies each and every allegation in said bill contained concerning the alleged conversations with the plaintiff, or its agents, upon the subject of a license, and denies each and every allegation in said bill contained in relation to the alleged interview touching the same, and denies that this defendant ever requested the said plaintiff to grant it a license to make and vend the said invention of said John Allender, and denies that it ever took any license from the plaintiff to use in the manufacture of machines made by this defendant any part of the invention of said John Allender, as alleged in said bill.

21 And, further answering, this defendant denies that it ever executed, or caused to be executed, or ever authorized any one in its name, or in its behalf, to execute the indentures in said bill mentioned, or either of them.

And, further answering, denies that either of said indentures have any valid or binding force whatsoever; that said plaintiff corporation, if legally created, which this defendant denies, was never authorized or empowered to enter into indentures, contracts, or agreements like the pretended indentures referred to in said bill; that they are not within the scope of any corporate powers or privileges granted to said plaintiff; and that they were never legally executed by the said plaintiff corporation, nor by this defendant or any of its agents. And this defendant alleges that ever since its organization it has had a corporate seal duly adopted and established, an impression of which is hereto affixed in the margin, and has never used or employed any other, or authorized any agent to use or employ any other.

[Impression of seal in margin of original.]

And this defendant, further answering, denies that it has ever deposited, or ever authorized any one on its behalf to deposit, with the plaintiff a sample machine, as alleged in said bill.

And, further answering, denies that it has ever made, or caused to be made, any machine containing any invention or improvement, or any part of any invention or improvement, made by said John Allender, or mentioned, described, or claimed in any patent granted to him or said plaintiff's assignees, or either of them; that the machines made by this defendant are and have been wholly unlike the machines or improvement described or claimed in any patent owned by said plaintiff, in form, construction, mode of operation, and principle, in each and every part thereof, but the same are made upon the plan, mode of operation, and principle of and under a patent granted to D. W. Swift by the U. S., dated January 28, 1862, of which this defendant corporation is the owner by due assignment.

This defendant, further answering, denies that either the said plaintiff or the said John Allender has or ever had any patent for an "improved washing and wringing machine," as recited or stated in said exhibits or indentures marked A and B.

This defendant, further answering, denies that it ever paid, or
22 ever authorized any one to pay, any money on its behalf to the plaintiff, as alleged in said bill.

This defendant denies that there is any other matter, cause, or thing in said bill of complaint contained material or necessary for it to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf sustained.

The Eureka Clothes Wringing Machine Company, by the undersigned, who is specially authorized to sign these presents, and to affix the seal of said Co. hereunto.

[L. S.] T. J. ALLENDER, *Ag't.*
JAMES B. ROBB, *of Counsel.*

DISTRICT OF MASSACHUSETTS,
Boston, March 4, 1867.

We, Thomas J. Allender and Samuel B. Rindge, on oath, severally say that we have read the foregoing answer, and know the contents thereof, and that the statements therein made are true, according to the best of our knowledge, information, and belief.

T. J. ALLENDER,
Ag't of Eureka C. W. M. Co.
SAMUEL B. RINDGE,
Late President and Treasurer E. C. W. M. Co.

Sworn to by the said Allender and the said Rindge, before me.
S. E. SPRAGUE,
Clerk U. S. Dist. Court Mass. Dist.

23 On the eleventh day of April, A. D. 1867, the following answer was filed, namely:

Circuit court of the U. S. Mass. district, ss.—Oct. term, 1866.

THE BAILEY W. & W. M. Co. } In equity.
vs.
THE EUREKA C. W. M. Co. }

The several answer of Sam'l B. Rindge, one of the defendants, to the bill of complaint.

This defendant, reserving all manner of exception to the many errors in said bill contained, for answer thereto says that, whether the plaintiff is a corporation duly established as in said bill is alleged, this defendant is ignorant.

And whether letters-patent were issued to John Allender and whether the same were surrendered and reissued from time to time, as in said bill is alleged, this defendant is also ignorant; and has no information concerning the same or touching the several proceedings relating thereto, except the allegations in said bill contained, upon which he can found any reliable belief.

And, further answering, says that he has no knowledge or information, other than the allegations in said bill, of the decease of said John Allender, or of the appointment of said Tho's Allender as executor, or of the alleged assignment of letters-patent to the said Bailey, or of any of the other alleged assignments of said letters-patent, whereby the plaintiff became possessed of the same, or of any of the acts and doings of the parties in reference thereto.

And, further answering, says he never had any knowledge or information of the alleged proceedings against said Slocum until said bill was exhibited in this case.

And, further answering, says that some time in the spring of 1865, or early in the summer, Seldon A. Bailey called upon this defendant and represented himself to be the owner of letters-patent which he alleged the said Eureka Company was infringing by the making and selling of wringing machines known as the Eureka clothes wringer, (in court to be produced,) and read to this defendant the claims of said patent,
24 and also permitted this defendant to read the part of the specification pointed out by said Bailey as the claim of the patentee to the invention therein set forth.

And this defendant, upon reading the same, was of the opinion, and so distinctly and positively informed the said Bailey, that said patent did not cover or embrace the machine manufactured by said Eureka Company, and that said company did not infringe said patent as alleged against it.

That this defendant has no recollection of ever having any other interview with the said Bailey upon the subject, until on or about the 24th March, 1866, as hereinafter stated. But he is informed that said Bailey had some conversation, at one or more times, with Mr. L. L. Tower, then one of the shareholders in said Eureka Company, upon the subject of a license, and he is also informed and believes it to be true that said Tower always refused to recognize the pretended claim of said Bailey.

And this defendant further says that he is informed that said Bailey insisted upon drawing up and presenting, for the consideration of the Eureka Company, licenses and agreements "like those entered into

between many other wringing-machine manufacturers;" and that on or about the papers annexed to said bill, and marked Exhibits A and B, were sent by said Bailey to Mr. T. J. Allender, the clerk of said Eureka Company, and at a stockholders' meeting, on the 11th of September, 1865, the attention of the company was called to the matter, and the only action ever taken by the company was a vote passed at that meeting to refer the subject to Mr. "L. L. Tower, for his judgment," upon the legality of said Bailey's claim. And this defendant believes it to be true that no one connected with or interested in the said Eureka Company ever said or did anything further relating to that matter until the 24th day of March, 1866, as hereinafter set forth, because it was the judgment of said Tower, as well as of all others connected with said company, that, said Bailey had no legal or equitable claim against said company under or by reason of his said patent.

This defendant, further answering, denies that either he or said Eureka Company, or any one on its behalf, ever requested the said plaintiff, or any of its agents, to grant said company a license as stated in said bill, or that said company ever took or received from said plaintiff any valid license, or entered into any indenture or agreement by which said company was bound as stated in said bill.

And, further answering, this defendant says that he did sign the name of said company to the paper annexed to said bill, and marked respectively A and B, but he says no authority whatsoever had been given by said company to him, or any other persons, to so bind said company; and further says, said signatures were procured by collusion between one David Lyman and said Bailey, and that he was induced to sign the same by misrepresentation and deception, and that therefore they are of no legal or binding force whatsoever; which this defendant respectfully submits appears by the following facts:

Prior to the month of June, 1864, one David Lyman, who claims to be stockholder, director, secretary, treasurer, and general agent of the Metropolitan Washing Machine Company, claimed by virtue of some interest which he or said company had in or under a patent, granted to one John Young, that the said Eureka Company was infringing said patent by the use of India-rubber rolls. And on the 25th June of that year the following vote of the company was passed:

"Voted, that S. J. Dennis, treasurer, be, and is hereby, authorized and directed to execute, on behalf of this corporation, articles of agreement with the Metropolitan Washing Machine Company, of Middletown, Conn., and also with said corporation and Haley, Morse, and Boyden, of Boston, to procure India-rubber rolls, and the right to use and vend the same on clothes-wringing machines made by this corporation, in such manner and form as is required by the parties aforesaid, and as in his judgment he may deem proper, subject to the approval of L. L. Tower, one of the directors."

And on the 6th March, 1866, a suit was brought against said Eureka Company for said alleged infringment of said John Young patent, and the plaintiffs were represented by said Lyman, who conducted the proceedings in said suit; that on or about the twenty-third day of March, 1866, and after some negotiations between the counsel of the parties in that suit, this defendant was requested by the counsel in that suit for the said Eureka Company to meet said Lyman at the office of the counsel for plaintiff in that suit in said Boston for the purpose of completing the settlement of the matter in controversy in said suit, which had been

substantially agreed upon between counsel; that, at the time ap-
26 pointed, this defendant, together with Mr. L. L. Tower and Mr. T. J. Allender, on behalf of said company, and Mr. Howe, the counsel of said company in said suit, went to the office of the counsel of said Metropolitan Company to meet said Lyman for the purpose aforesaid, and found there not only said Lyman, but said Seldon A. Bailey, who had no interest whatsoever in the business of said meeting, and his presence there was a surprise to this defendant and his asssociates; that after the business of said meeting had been completed, and the papers relating to said settlement signed, said Lyman said, "Now, then, you may as well make an arrangement with Mr. Bailey."

This defendant, and also said Tower and said Allender, insisted that the said company did not use the invention, or any part of it, covered by said alleged patent; but said Lyman and said Bailey, in an earnest and protracted discussion, insisted that said Eureka Company should take a license from said Bailey under his said patent; that this defendant and said Tower denied that said Eureka Company used any part of said alleged invention; that said Lyman represented that he had contested the claim of said Bailey also, but that he had been compelled to submit; that he had sent to England and Scotland to see if he could not find something to invalidate said Bailey's claim; that he or his agent had also visited the factories at Paisley for that purpose; that he had been at a great deal of expense and research, and had employed counsel and the most eminent experts to look into the matter, and had found that he could not break it up, and that he should advise us by all means to take a license from Bailey, and that the Eureka Company could not go on and manufacture unless it did so; that he had had a suit with said Bailey, and had given it up because he found that said Bailey could substantiate his claim to the broad principle of adjusting springs used in wringing machines; and that there could be no question that said Bailey's patent covered the machines made by said Eureka Company.

By these representations of said Lyman, so positively and earnestly stated, and repeated, uncontradicted, and confirmed by said Bailey, and having no doubt or suspicion of the good faith of the said Lyman, and being without counsel in this matter, and without the aid of any legal opinion upon the subject, (no member of the company ever having consulted counsel in reference to said patent,) the said Tower and
27 said Allender, as well as this defendant, were induced to believe that it might be for the interests of said Eureka Company to accept the license from said Bailey, and to execute the papers he had prepared for that purpose.

And this defendant agreed to sign, on behalf of said company, the exhibits annexed to said bill, marked A and B respectively; but at the same time he distinctly, positively, and repeatedly stated to said Bailey and said Lyman that he was not authorized to enter into any agreement binding the company in reference to said Bailey's patent. And he also stated, as aforesaid, that he was not authorized to sign any agreement binding the said company to the Metropolitan Company; but inasmuch as authority had been given in the premises to the predecessor in office of this defendant, by the vote passed on the 25th of June, 1864, he had no doubt that his act in executing said agreement with the Metropolitan Company, on behalf of said Eureka Company, would be confirmed by said company.

And although no authority had been given to bind said company to any agreement relating to said Bailey's patent, and although the only action ever taken by said company in reference thereto was the vote

passed on the 11th September, 1865, referring the subject to Mr. L. L. Tower for his judgment as to the legality of said Bailey's claim, yet believing the aforesaid representations of said Lyman and said Bailey to be true, this defendant did say that, notwithstanding he was not authorized to sign said papers, he had no doubt the said company would approve of his doings.

And this defendant, further answering, says that before the next meeting of the stockholders of said Eureka Company, he received such information as led him and others in interest in said company to believe that the representations of the said Lyman and the said Bailey, by which he was induced to sign said papers, were false, and that the suit referred to had been compromised and settled by a division of interest in certain patents, and not because said Lyman was satisfied of the validity of said Bailey's patent; and also that said Lyman was possessed of information which he well knew was sufficient to invalidate said patent, and that he procured the said Bailey to be present
28 and press the matter of his claim, because of some interest which he, the said Lyman, had in the premises.

And this defendant was also informed, and believes the same to be true, that said Lyman has since then declared that it was owing to his management, and the adroitness exercised by him on behalf of said Bailey, that the said papers were ever signed as they were, and that the said Bailey owed his success in procuring said papers entirely to him, or words to that effect.

The said company, therefore, refused to be bound by the said agreement, and this defendant not long afterwards informed said Bailey accordingly; but he, at the same time, also declared that if said Bailey would convince the parties in interest that said company was using his invention, or his patent, they would promptly and cheerfully do what was right in the premises; and denies that said company ever put the plaintiff off by any pretence whatsoever, as alleged in said bill.

This defendant, further answering, says he has no personal knowledge of the payment of fifty dollars, as alleged in said bill; but he has been informed, and believes the same to be true, that said Alexander sent the sum of fifty dollars to S. S. Cook, by a check payable to his order, under a special arrangement made by him with said Bailey and said Cook.

This defendant, further answering, denies that he was ever called upon by any agent of the said plaintiff, to his knowledge, for any account or return of the number of machines made by said company, and that he has no knowledge of the sending of any sample machine, as stated in said bill

And he denies that the said company ever made or sold any machines embracing any invention, or any part of any invention, made by John Allender, or covered by any patent owned by said plaintiff, known to this defendant.

This defendant denies that any other matter, cause, or thing in said bill of complaint contained material or necessary for it to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant.

All which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct,
29 and prays to be hence dismissed, with his reasonable costs and charges in this behalf sustained.

SAMUEL B. RINDGE.

APRIL 9, 1867.

UNITED STATES OF AMERICA, *Mass. District, ss:*
Subscribed and sworn to before me.

JOHN G. STETSON,
Clerk U. S. C. C.

JA'S B. ROBB, *of Counsel.*

Whereupon the following replications were filed, namely:

UNITED STATES OF AMERICA,
Circuit Court of United States, Massachusetts District, ss:

BAILEY WASHING AND WRINGING MACHINE Company
vs.
EUREKA CLOTHES WRINGING MACHINE Company and S. B. Rindge.

The replication of the Bailey Washing and Wringing Machine Company, complainant, to the answer of the Eureka Clothes Wringing Machine Company.

This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiences of the said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is and will be ready to aver and prove, as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

M. E. INGALLS,
Solicitor for Plaintiff.

30 UNITED STATES OF AMERICA,
Circuit Court of United States, Massachusetts District, ss:

BAILEY WASHING AND WRINGING MACHINE Company
vs.
EUREKA CLOTHES WRINGING MACHINE Company and S. B. Rindge.

The replication of the Bailey Washing and Wringing Machine Company, complainant, to the answer of S. B. Rindge.

This repliant, saving and reserving unto itself all and all manner of advantage and exception to the manifold insufficiences of the said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is and will be ready to aver and prove, as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

M. E. INGALLS,
Solicitor for Plaintiff.

30a This cause having been entered as aforesaid at the October term of this court, A. D. 1866, and the parties having appeared on the eleventh day of April, A. D. 1867, the following decree was entered, namely:

Upon hearing, it is ordered, by consent of parties, that an injunction issue out of this honorable court against the said Eureka Clothes Wringing Machine Company, unless they shall give a bond, with two approved sureties, in the sum of five thousand dollars to pay any and all sums that may be found due from them to complainants on final decree in said cause; and also unless they make returns under oath of the proper officer of all the wringing machines manufactured by them since the twenty-fourth day of March, A. D. 1866, until the present time; and shall also make upon the fifth of each month a like return of the wringing machines manufactured by them the preceding month until final decree in said cause. These returns shall be made to the clerk of the said circuit court, and shall be filed by him with the other papers in said
30b cause. In each return the defendant shall specify the description of the machine of which return is made. This decree to stand until the further order of the court.

This cause was thence continued from term to term to the October term of this court, A. D. 1867, when the following agreement was filed, namely:

Agreement, filed February 26, 1868.

It is agreed that printed copies of plaintiffs' exhibits, marked "C," "E," "F," "G," and "H," may be filed instead or original; the originals to be used at the hearing by either party who desire so to do; also that Exhibits "D," "R," and "Allender Machine" may be left with plaintiffs, counsel to be produced at hearing in court. Defendant also agrees that, for the purpose of this case, the exhibit marked "Allender Machine" shall be deemed precisely like the original model deposited in Patent Office by Allender. It is also agreed that all objection to the interrogatories and answers in the testimony in this case need not be stated at length upon the record, but merely marked "objected to" by the
30c examiner, and the objections to be stated at length at the hearing.

It is also agreed that the exhibits marked "I," "S," "Y," "6," "7," "8," "9," "10," "11," "12," "13," "14," "15," "16," "17," "18," and "19," may not be printed with the record, but that either party may refer to them at the hearing, and print them afterwards if deemed necessary.

M. E. INGALLS, *for Plaintiff.*
JAMES B. ROBB, *for Defendants.*

This cause was thence continued to the May term of this court, A. D. 1868, when publication of the testimony was ordered, and the cause set down for hearing and fully heard.

This cause was thence continued from term to term to the May term of this court, A. D. 1869, when, to wit, October 2d, 1869, the following decree was entered, namely:

This cause having been brought to a final hearing upon the pleadings and proofs, and counsel for the respective parties having been heard, and the same having been duly considered, it is found and hereby ordered, adjudged, and decreed—

30d That the agreements bearing date March 24th, A. D. 1866,

were entered into by the parties, as alleged in the bill of complaint, and are valid and binding upon the defendant company; that the machines made and sold by the defendant company are substantially like the machines referred to in said agreements and the sample machine mentioned therein, which was produced in court; and that the plaintiffs are entitled to an account and payment, as prayed for in said bill of complaint.

It is also ordered that John G. Stetson be, and he hereby is, appointed master in said cause to take an account of the number of machines made and sold by the defendant company since the execution of the said agreements, and the royalty due on the same and unpaid, and the interest which has accrued on account of the delay of the defendant company in making payments, and generally to ascertain and report the amount due the plaintiffs from the defendant company under said agreements.

30*e* All other matters are reserved until the master's report is made.

This cause was thence continued to this present October term of this court, A. D. 1869, when, on the fifth day of November, the master files the following report, namely:

Master's report.

I have attended to the duty imposed upon me by the decree of the court in the above-entitled cause, entered Oct. 2d, 1869, and having duly considered the agreement of parties hereto annexed, marked C, and the agreements bearing date March 24th, A. D. 1866, referred to in the said decree of the court, and the complainant having waived any and all claim for interest, I find and report that the defendant company has made, under the said agreements bearing date March 24, A. D. 1866, prior to November 1st, A. D. 1869, ten thousand machines, on each of which there is due from said defendant company to the complainant company a royalty of fifty cents; and that the whole amount due from said defendant company to said complainant company, under said agreements, prior to November 1st, 1869, and unpaid at the

30*f* date of this report, is five thousand dollars.

Respectfully submitted.

JOHN G. STETSON, *Master.*

NOV. 4TH, 1869.

"C."

UNITED STATES CIRCUIT COURT, *Mass. District, ss:*

BAILY W. & W. M. Co. *vs.* EUREKA CLOTHES WRINGING M. Co. } In equity.

It is agreed by and between the above parties that the master may report ten thousand machines made by the defendant company in the case prior to November 1st, A. D. 1869.

JAMES B. ROBB, *for Def't.*
M. E. INGALLS, *for Pl'ffs.*

NOV. 2, '69.

And on the same day, complainant's counsel stating to the court and to def't's counsel that his waiver of interest was made under a mistake

consent of parties the cause is recommitted to the master.

tenth day of November the master files the following report,

Master's report.

This cause having been recommitted to me by the order of court, entered November 5th, 1869, I assigned a time and place for proceedings before me, as master, and gave due notice thereof to each of the parties. The parties appeared at the time and place appointed, and agreed that the interest which has accrued on account of the delay of the defendant company in making payments, under the agreements bearing date March 24th, 1866, in this cause, amounts to five hundred dollars. I add, therefore, to the five thousand dollars found due from the defendant company to the complainant company, as royalty under said agreements, said sum of five hundred dollars due as interest, and I find and report that the whole amount due from said defendant company to said complainant company, under said agreements, prior to November 1st, 1869, and unpaid at the date of this report, is five thousand five hundred dollars

Respectfully submitted.

JOHN STETSON, *Master.*

NOV. 10TH, 1869.

30*h* Thereupon, the following decree is entered, namely:

And now, to wit, November 10th, 1869, upon the coming in of the second report of the master in this cause, it is ordered, adjudged, and decreed that the said report of the master be confirmed. And it is further ordered, adjudged, and decreed that the said Eureka Clothes Wringing Machine Company pay to the said Bailey Washing and Wringing Machine Company the sum of five thousand five hundred dollars, being the amount found by the master to be due from the said defendant company to the complainant company, together with the costs of this suit, taxed at six hundred and thirty-nine dollars.

And it is further ordered, adjudged, and decreed that the said defendant company be [be] enjoined as prayed for in the said complainant's bill of complaint, unless they pay to the said complainants the said sum of five thousand five hundred dollars and costs of suit, taxed at six hundred thirty-nine dollars, within ten days from the date hereof.

30*i* Thereupon the following claim of appeal is filed, namely:

Appeal from the final decree.

And now the said defendant corporation appeals from the final decree in said cause to the Supreme Court of the United States, and prays that this appeal may be duly entered of record, & that execution be superseded.

By its attorney,

JAMES B. ROBB.

And said Eureka Clothes Wringing Machine Company gives good and sufficient security to prosecute its said appeal to effect and answer all damages and costs if it fail to make its plea good; which security is approved by the court; and said appeal is allowed accordingly.

A true record.

Attest: JOHN G. STETSON, *Clerk.*

30j At the hearing of said cause the following evidence was used, namely:

31 PROOFS FOR COMPLAINANT.

Deposition of Seldon A. Bailey.

SATURDAY, *May* 11, 1867.

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Seldon A. Bailey; age 45 years; residence at Woonsocket, R. I.; I am general agent for the Bailey Washing and Wringing Machine Company.

Int. 2. How long have you been general agent for that company?

Ans. I was appointed general agent July 1, 1865, and have been so ever since.

Int. 3. Whether or not in March, 1866, you, as agent of that company, entered into a contract in writing with the Eureka Clothes Wringing Machine Company?

Ans. I did.

Int. 4. Produce said contract in writing, if in your possession.

Ans. I produce Exhibits A and B, the original license and agreement. They are each marked C. W. T., Examiner.

Int. 5. Have you a certified copy of the John Allender patent, as reissued April 18, 1865, referred to in the Exhibits A and B? If so, produce and annex it.

Ans. I have it, and here it is. It is marked Exhibit "C," C. W. T., Examiner.

(Answer objected to.)

Int. 6. State where the Exhibits A and B were executed.

Ans. At Whiting & Russell's office in Boston.

Int. 7. Whether or not Thomas J. Allender, who signs the answer of the respondent company, and S. B. Rindge, the other respondent, were present at the execution of Exhibits A and B.

Ans. They were.

32 Int. 8. Whether or not a sample machine of the respondents was delivered to the complainants; and, if so, when and where did you first see it?

Ans. We received a machine. The first I saw of it was at our office, the company's office at Woonsocket. This was several days after the Exhibits A and B were executed. At the time those Exhibits A and B were executed we had no sample machine there. Mr. Alexander promised to forward it the next day. When this machine was received, I supposed it to be the sample machine that Mr. Alexander agreed to forward, and placed it among our other sample machines which we had from other parties.

Int. 9. What was afterwards done with it and where is it now?

Ans. I brought it into Boston to be used in court on the application for an injunction in this cause. I took it to the court; after the court was over, I took it to Mr. Woodbury's office, where it remained till this morning; at least, I find it this morning there. It is now here present.

Int. 10. Have you any private mark of your own on this sample machine; if so, when did you put it on?

Ans. I have a mark on it; I put it on when I left it at Mr. Woodbury's office, after returning from the court.

Int. 11. When did you first examine this sample machine to see whether there were any marks on it when it came?

Ans. The first that I could swear to in particular was after it was carried into court, at the time I have spoken of.

Int. 12. State whether there are any other marks on it, and how and when did you first discover them.

Ans. I discovered some marks on this day we speak of, in court.

Int. 13. State fully what examinations you have made of such marks, and where, and how.

Ans. I examined—I looked this machine over in court, and did not discover any mark on the rolls I was looking after, and supposed they were marked. I attempted to move the rolls, to turn them, but could not. I had no crank with it. After I carried the machine to Mr. Woodbury's office from the court that day, I put this mark, my private mark, on the frame, and left the machine there. Several days after that I was in Mr. Woodbury's office, and I told Mr. Ingalls I was quite sure there must be a mark on that machine, on the rolls. We undone the machine,
33 and examined it. Mr. Ingalls attempted to turn the roll, but could not. We then found a crank and put on the machine, and turned the rolls, and discovered they were marked in two places; one place, the name "Eureka," March 24, 1866; another place, "Eureka," Oct. 1, 1865. The last mark, "1865," seemed to be entirely enclosed between the rolls. The one of March 24, 1866, partially showed, I discovered afterwards, when the rolls were together, as they were before they were moved. There are other marks on the sample machine that I discovered when I examined it in court. "Swift's Patent, Jan. 28, 1862;" another, "Eureka," C. W. M. Co., Waltham, Mass. I now discover, stamped, the figure one on the wood. This crank did not come with the machine; I think there was no crank with it. (The answer being read over to the witness, he corrects the expression, "I told Mr. Ingalls I was quite sure there must be a mark on that machine, on the rolls," and says, I told Mr. Ingalls I was quite sure there was a mark on those rolls.)

Int. 14. Had you or not, prior to the execution of these agreements, seen in the shop of the respondent company machines like this sample?

Ans. I had, in their office and salesrooms. I had then never been in their factory.

Int. 15. Produce the sample machine to the examiner, about which you have testified.

Ans. Here it is; it is marked D, C. W. T., Examiner.

Int. 16. Whether or not, after the execution of this license, Exhibit A, your company received any license money from the respondent company?

Ans. Our treasurer showed me a check for fifty dollars, and a letter, and asked me if he should send a receipt in full, as they requested. I told him to send a receipt on account of tariff, as they gave us no statement of the number of machines they had made, excepting that this was to pay for the rolls that they had bought of the Woonsocket Rubber Company; for the tariff on the rolls I mean.

Int. 17. What name was signed to that letter?

Ans. Mr. Alexander's, I think.

Int. 18. Whether or not, since that time, complainants have made any demands upon the Eureka Company for an account?

34 Ans. They have.

Int. 19. State what you know of the demands made.

Ans. I went to their factory in Waltham, some time in December last, I think, and saw their agent there, Mr. Alexander, and talked with him in regard to making returns. Mr. Alexander informed me his orders

were to make no returns to us. There is nothing further that I can state about that, that I know of.

Int. 20. Whether or not the agent of the respondent company, at any time after the execution of the Exhibits A and B, made any application to you, directly or indirectly, to obtain a release for any machines made by that company?

Ans. They did.

Int. 21. State the circumstances of such applications.

Ans. The agent, Mr. Alexander, called on me at Woonsocket and requested me to give him a receipt for their company for past infringements. I declined to do it. He then requested me to give him a letter to their company, that they should have the privilege of finishing and selling what machines they had the rolls made for, and not in their frames at the time those Exhibits A and B were executed, and do it free from any tariff. I declined to do that, stating that I did not know but they might have large quantities of rolls on hand at that time.

Int. 22. How long after the date of these written agreements, A and B, did these conversations begin, if you remember?

Ans. I could not state the exact date; I should think within two or three weeks.

Int. 23. When you visited the respondent company's works at Waltham, what style of machines were they building there as compared with the sample?

Ans. Substantially the same style, I should say, with the exception of the fastener to the tub; that had a swivel joint; otherwise it was about the same thing. Perhaps it would not be called a swivel joint; it might be called a butt joint.

WEDNESDAY, *May* 29, 1867.

Complainant here offers in evidence the indenture made October 16, 1863, between Thomas Allender, executor of John Allender, of the first part, and Seldon A. Baily, of the second part, conveying letters-
35 patent granted to John Allender January 11, 1859, and the certificate of the clerk of the probate court; it is marked Exhibit E, C. W. T., Examiner. Also deed of Seldon A. Bailey to Bailey, Cook & Cook, trustees of the firm of Bailey, Cook & Co., conveying inter alia said patent right, dated December 16, 1863; received and recorded January 7, 1864; it is marked Exhibit F, C. W. T., Examiner. Also deed of Seldon A. Bailey, Simeon S. Cook, Benedict M. Cook, trustees of Bailey, Cook & Co., assigning and conveying inter alia to the Bailey Washing and Wringing Machine Company all their rights under said patent, dated July 22, 1865, and recorded December 18, 1865, and marked Exhibit G, C. W. T., Examiner. Also act of the State of Rhode Island and Providence Plantations, in general assembly, May session, 1865, entitled an act to incorporate the Bailey Washing and Wringing Machine Company, certified by the secretary of state, under the seal of the State, May 14, 1867, marked Exhibit H, C. W. T., Examiner.

Cross-interrogatories proposed to witness by J. B. Robb, esq.:

Cross-int. 1. Where did you reside and carry on business in January, 1859?

Ans. I resided in New London, Conn., and carried on business there.

Cross-int. 2. What business?

Ans. I was manufacturing patent cork-fasteners for soda bottles. I made some wringing machines.

Cross-int. 3. How long did you reside and carry on business there?

Ans. I left New London in 1862; in the fall of 1862 I moved my family from there. I carried on business there till after I moved my family from there.

Cross-int. 4. How extensively were you engaged during that time in the manufacture of wringing machines?

Ans. Some of the time we were getting up fifty a week; some of the time a good deal less. Some parts of the machines were made outside the shop by contract, but were put together in the shop.

Cross-int. 5. When did you commence to manufacture wringing machines?

Ans. We commenced to manufacture wringing machines, for sale, in the early part of 1859.

36 Cross-int. 6. Did you obtain a patent for wringing machines like those manufactured by you at that time?

(Objected to.)

Ans. I did obtain a patent, which I worked under at that time, which I manufactured machines under.

Cross-int. 7. Please give the date of that patent.

Ans. April 5, 1859.

Cross-int. 8. Was any other person interested with you in the manufacture of machines while you carried on business in New London?

Ans. Not in the wringing-machine business.

Cross-int. 9. Did you have a partner in business during the time you carried on business in New London; if so, who?

Ans. I had two partners in the cork-fastener business, but none in the wringing-machine business. Their names are John Allender and Thomas Pimer. They were special partners.

Cross-int. 10. When did you first become acquainted with John Allender?

Ans. I could not say very near. I should think as early as 1850, but am not positive.

Cross-int. 11. How long had you lived in New London before 1859?

Ans. I should think ten or fifteen years. I don't recollect exactly.

Cross-int. 12. When did your copartnership with John Allender commence?

Ans. I don't recollect exactly, but I should think in 1855, as near as I can recollect.

Cross-int. 13. Did John Allender carry on any other business during the time of your copartnership?

Ans. I think he did.

Cross-int. 14. What do you think it was?

Ans. Manufacturing wringing machines.

Cross-int. 15. When do you think he commenced to manufacture wringing machines?

(Objected to.)

Ans. I think he commenced to manufacture, for sale, some time in the year 1859.

37 Cross-int. 16. Have you any doubt that, during the time of the copartnership between you and John Allender, he was manufacturing wringing machines?

Ans. I have not.

Cross-int. 17. About what time did you first hear or learn of his making a wringing machine?

(Objected to as irrelevant.)

Ans. I could not state very close to the time without referring to some memorandum. I had one of his machines at my house, I should

think, in 1858 I had known of his experimenting on wringing machines for several years.

Cross-int. 18. Who worked for said John Allender in making wringing machines?

(Objected to.)

Ans. He worked on them himself; perhaps some of his boys worked for him—I mean his sons. He had some other help, but I don't remember their names now.

Cross-int. 19. When your moved from New London, to what place did you go to reside?

Ans. North Wrentham, Mass.

Cross-int. 20. Did you continue the manufacture of wringing machines there?

Ans. I did.

Cross-int. 21. How long?

Ans. Something over a year.

Cross-int. 22. Please state where and during what periods you carried on the business of manufacturing wringing machines since you left North Wrentham.

(Objected to.)

Ans. I think the last of 1863, or the early part of 1864, I moved to Woonsocket, Rhode Island, where I have been interested in the business ever since.

Cross-int. 23. How many patents, if more than the one obtained by you in April, 1859, did you work under in manufacturing wringing machines prior to October, 1863?

(Objected to.)

Ans. I don't exactly recollect the number now; I should think two or three.

38 Cross-int. 24. Did you obtain any other patents during that period?

Ans. I did.

Cross-int. 25. Please give their dates.

Ans. One March 27, 1860; the others I do not remember the dates.

Cross-int. 26. State as nearly as you can.

Ans. I am not able to state the month; I think I took one or more in 1861; I don't remember whether I took any in 1862 or not.

Cross-int. 27. Did you ever see a wringing machine before you saw the wringing machine made by John Allender?

(Objected to.)

Ans. Not with rolls.

Cross-int. 28. Where did you see the first wringing machine?

Ans. I made it.

Cross-int. 29. Then the first wringing machine you ever saw you made yourself, did you?

Ans. I did.

Cross-int. 30. When and where did you make it?

(Objected to.)

Ans. I cannot give you the date here. It was at New London, Conn.

Cross-int. 31. Did you ever see a wringing machine with rolls or rollers before you made the first machine like that described in your first patent, except those made by John Allender?

(Objected to.)

Ans. I never did.

Cross-int. 32. Then you had no knowledge of the existence of wring-

ing machines with rollers until you saw the wringing machine made by John Allender, had you?

(Objected to.)

Ans. I had not.

Cross-int. 33. Where did Simeon S. Cook and Benedict M. Cook reside in 1858 or 1859?

(Objected to.)

Ans. I could not say, only from hearsay.

Cross-int. 34. Did they reside in or carry on business in New London during those years?

(Objected to.)

39 Ans. Not that I know of.

Cross-int. 35. When did you first become acquainted with them, and where did they reside then?

(Objected to.)

Ans. In 1863; they resided in Woonsocket, in R. I; some time in the fall of 1863 they resided there.

Cross-int. 36. Between January 1, 1859, and October, 1863, did you have any interest, by assignment, in any other patents for wringing machines?

(Objected to.)

Ans. I think I did not. I am quite sure I did not. I had an agreement for rolls made under the Goodyear patent.

Cross-int. 37. How many patents for wringing machines does the plaintiff corporation own under which they have granted licenses to others to manufacture?

(Objected to.)

Ans. I think we have granted licenses for only one patent; yes, we have for two.

Cross-int. 38. How many persons or parties have licenses been granted to by plaintiff?

(Objected to.)

Ans. I could not say exactly; I should think twelve or fifteen.

Cross-int. 39. Are you willing to say that the number is less than twenty?

(Objected to.)

Ans. I should think it was, but I could not state positively without referring to the account. I should think not over fifteen.

Cross-int. 40. Please state if you have blanks to be used by licensees in making returns under licenses.

Ans. The company has.

Cross-int. 41. Will you be kind enough to produce one of said blanks?

Ans. I will at a future time. I have none with me.

THURSDAY, *May* 30.

Witness here produces a blank form of monthly return of machines made under the license; it is marked Exhibit I, C. W. T. Examiner.

40 Cross-int. 42. Did you ever receive from the defendant, or from any one purporting to act on its behalf, a return on such a blank of the number of machines manufactured by it?

Ans. I have never seen any such one.

Cross-int. 43. Was it not the custom of the plaintiff company to furnish to licensees such blank forms upon which to make their returns?

Ans. I think such blank forms have usually been sent to licensees.

Cross-int. 44. Have you ever testified in suits in the United States courts as an expert in patent cases?

Ans. I think not.

Cross-int. 45. Are there not, to your knowledge, several patents upon that part of the wringing machine known as the fastener to the tub?

Ans. There are.

Cross-int. 46. Has the plaintiff company ever made any wringing machines conforming in all respects to the wringing machine shown in the drawing of the patents granted to John Allender, mentioned in the bill of complaint?

Ans. It has never made any of the exact form in every respect.

Cross-int. 47. Did they ever make any with the rollers formed by winding a flat spring spirally, or in the form of a helix over a wooden shaft or roller?

Ans. They never have, except in repairing machines that were formerly made by Mr. Allender.

Cross-int. 48. Did the company ever make any with such a roller as is described in said patents, in combination with a spiral spring and a thumb-screw, as shown in the drawings of said patents?

Ans. Perhaps not of that exact form.

Cross-int. 49. How did the machines made by the company, referred to in the preceding answer, differ from the said description and drawings in those particulars?

Ans. Excepting rolls that were made to repair machines, we never used the steel coil spring; we have used wood and rubber both, in many different forms, which operated substantially like the steel coil spring. We have used springs made of wood and rubber in both places; and also used steel for pressure springs, but not in the spiral form.

41 Cross-int. 50. In what form did the company use steel for pressure springs?

Ans. Elliptic.

Cross-int. 51. In what part of the machine was the elliptic spring placed?

Ans. Over the top of the rolls, having its bearings on the journal boxes of the upper roll.

Cross-int. 52. Did the company use a set screw or a thumb-screw in combination with the elliptic spring?

Ans. They did.

Cross-int. 53. How many such machines has the company ever sold?

Ans. I don't know as there were ever any sold of that form.

Cross-int. 54. Is it not true that all or most of the machines made by the company were made under patents obtained by you for your inventions?

Ans. I should say that most of the machines the company manufacture used some parts of my invention.

Cross-int. 55. Don't they use your patented roller?

Ans. They use some of them.

Cross-int. 56. Don't they use your pressure spring?

Ans. They use a spring for pressure that I obtained a patent on in most of the machines; that is, I obtained a patent on the combination.

Cross-int. 57. When was that patent obtained?

Ans. April 5, 1859.

Cross-int. 58. Has it been reissued; if so, how many times?

Ans. It has been reissued, I think twice; it was not till the first reissue that we laid claim to the spring in combination with the rolls.

Cross-int. 59. Has the company used rubber for pressure spring in all the other machines made by it?

Ans. I think so:

Direct resumed:

Int. 24. State whether or not plaintiffs own other patents on washing and wringing machines besides the John Allender patent here sued on.

Ans. They do.

42 Int. 25. How lately have you seen wringing-machine rollers, with the internal arrangements shown in the John Allender patent drawings, brought to your company's shop for repairs?

Ans. I should think within three months.

Int. 26. When you stated you had not testified in the United States courts as an expert, did you or not refer to any testimony given in this suit, or in any one where you were a defendant, concerning washing and wringing machines?

Ans. I have testified in regard to washing and wringing machines.

Cross resumed:

Cross-int. 60. Do you mean to swear that you have ever testified in any case as an expert?

Ans. Never, excepting you might call my testimony as such on some points. I understood the first question to be that I was a practising expert.

Cross-int. 61. In what court, and in what case or cases, if any, did you ever testify as an expert?

Ans. Does that include affidavits?

Cross-int. 62. Can you not answer the preceding interrogatory without a reply to your question?

Ans. I think not, understandingly.

Cross-int. 63. Then you mean to say that you cannot say whether you have testified in court as an expert or not, unless the giving of an affidavit is testifying, do you?

Ans. Excepting in this case.

Cross-int. 64. You mean to say, do you, that you have never testified as an expert in any case, or in any way, than by giving an affidavit in this suit?

Ans. I did not state that.

Cross-int. 65. Will you be kind enough to answer the sixty-first cross-interrogatory?

(Objected to: The witness has asked an explanation of the question now put, and has not received it, and is entitled to before he goes on.)

Ans. In no case, excepting this, except by affidavit.

S. A. BAILEY.

43 *Deposition of John P. Whipple.*

THURSDAY, *May* 30, 1867.

Int. 1. Please state your name, age, residence, and occupation.

Ans. My name is John P. Whipple; age, twenty-six years; reside at Woonsocket, R. I.; I am secretary and treasurer of the Bailey Washing and Wringing Machine Company.

Int. 2. How long have you been in their employ as treasurer and secretary?

Ans. Since the fourth of September, 1865, I have been in their employ. I was appointed secretary and treasurer in the same month, and have held the office ever since.

Int. 3. Whether or not you know anything about the receipt of fifty dollars by the plaintiff company from the defendant company?

Ans. As the treasurer of the company, I received a check for fifty dollars which was handed to me with a letter explaining that it came from the Eureka Company.

Int. 4. What has become of said letter?

Ans. I handed the letter to Mr. Simeon S. Cook.

Int. 5. When did you last see it?

Ans. I don't know that I have seen it since.

(Plaintiff offers in evidence the original letter addressed to Mr. S. S. Cook, dated Waltham, May 17, 1866, and sigened T. J. Alexander, ag't. It is marked Exhibit K, C. W. T., Examiner.)

Int. 6. Did Mr. Cook hand you the check of fifty dollars at the time he showed you this letter; and, if so, at what date was this done?

Ans. He handed me the check and the letter at the same time; it was either the 18th or 19th of May, 1866.

Int. 7. Did you collect said check; if so, whom did you credit with the proceeds?

Ans. I collected the check, and gave the Eureka Clothes Wringing Machine Company credit for it.

Int. 8. Whether or not you gave any receipt for them for the same? and if so, produce a copy of the same.

(Objected to.)

Ans. I sent a receipt by mail to the Eureka C. W. M. Company,
44 Waltham, Mass., and before sending took copy of the same, which I here produce. This is not the copy, but a copy. The original copy is in my letter-book. It is marked Exhibit L, C. W. T., Examiner.

Int. 9. State how the copy in your letter-book was made.

Ans. By wetting the leaf of the letter-book, and putting the face of the receipt on the leaf and pressing it.

Int. 10. The copy produced is partly printed; was the original all in writing or partly printed?

Ans. The original was a printed blank filled out in writing. The impression on the letter-book shows only the parts which were in writing.

Int. 11. Why did you not send a receipt in full to the defendant company, as requested?

Ans. I informed Mr. Bailey of the request, as shown in the letter; he directed me to send a receipt on account.

Int. 12. Had your company, prior to this, received or filed any letters signed T. J. Alexander, agent, or T. J. Alexander, Eureka C. W. M. Co.; and, if so, is this letter now produced one so filed by you?

Ans. There was one received at the office of the company, addressed to S. A. Bailey, Woonsocket, R. I., with a stamp Woonsocket, R. I., with a stamp on the corner of the envelope, Eureka C. W. Machine Co.; post marked Boston, Mass., Dec. 23d, and a three-cent postage stamp cancelled. The letter was dated Boston, Dec. 23, 1865, signed T. J. Alexander, Eureka C. W. M. Comp. This letter and envelope was filed by me among the company's letters. The letter and envelope are marked Exhibit M, C. W. T., Examiner.

Int. 13. State whether the letter and envelope now shown you marked Exhibit N, C. W. T., Examiner, from L. L. Tower, addressed to S. A. Bailey, dated Nov. 17, 1865, was, prior to this time, received or filed in your office.

Ans. It was received and filed by me.

Int. 14. Look at Exhibit K, C. W. T., Examiner, and state whether or not this is the letter S. S. Cook showed you when he handed you the fifty-dollar check you testified about.

Ans. I should say it was the same.

Int. 15. Do you know anything about a sample machine, having Eureka C. W. M. Co. trade mark on it, being received at the plaintiff's works?

45 Ans. We have had such a machine at the office of the company.

Int. 16. When did it come?

Ans. It was received, I think, by express, during March or April, 1866; at least, I found it among the express packages one day when I came into the office.

Int. 17. When was it taken from your office?

Ans. A short time since, at the time of the commencement of this suit for an injunction.

Int. 18. Was it taken away at the time for the hearing of an injunction, or at the time when the suit was begun, if you know when those dates were?

Ans. I cannot tell the precise time when it was taken away.

Cross-interrogatories proposed by J. B. Robb, esq.:

Cross-int. 1. Has the plaintiff corporation, and did it have on the 24th of March, 1866, a common seal? If so, describe it.

Ans. The corporation has not had any special seal; it has always used an ordinary seal.

Cross-int. 2. Was not Simeon S Cook treasurer of the Woonsocket Rubber Company at or about the time he received the letter marked Exhibit K?

Ans. I think he was.

Cross-int. 3. Did not that company at or about that time, and previous thereto, manufacture India-rubber rolls for wringing machines for sale?

Ans. They manufactured wringing-machine rolls about that time for our company.

Cross-int. 4. Did not that company also manufacture India-rubber rolls for sale to others?

Ans. I don't know.

Cross-int. 5. (De bene esse.) Was not the check referred to in that letter indorsed by Simeon S. Cook, as treasurer, when you received it from him?

Ans. I don't remember the indorsement.

Cross-int. 6. Have you any recollection upon that subject?

Ans. Nothing special, more than receiving the check.

46 Cross-int. 7. You have said you collected that check; did you present it at the bank on which it was drawn?

Ans. I did not.

Cross-int. 8. How did you collect it?

Ans. I collected it through our bank at Woonsocket; I think the Woonsocket National Bank.

Cross-int. 9. (De bene esse.) Was it not payable to S. S. Cook, treasurer, or order?

Ans. I don't remember.

Cross-int. 10. Was said Cook at that time treasurer of the Bailey W. and W. M. Co—at or about that time?

Ans. He was not.

Cross-int. 11. (De bene esse.) Will you produce the letter-book referred to in your answer to the eighth direct, and also referred to in the ninth direct interrogatory?

Ans. It is not here to-day; I can bring it at another time.

Cross-int. 12. Will you do so?

Ans. I will.

Cross-int. 13. Are you in the habit of taking copies in the way you have described in answer to the ninth direct interrogatory of all receipts made upon printed blanks, such as you have described in answer to that interrogatory?

Ans. I am not, generally.

Cross-int. 14. Do you remember any other instance in which you made a copy of such a receipt in that way?

Ans. I do, several.

Cross-int. 15. State them.

Ans. It had been my usual practice to take copies of anything; any receipts that I might think important; especially for money received for tariff.

Cross-int. 16. State any other instance in which you remember to have made a copy of a receipt for tariff in that way.

Ans. I have made such copies of receipts sent to D. Ward, New York City; I think, some to Gunn and Ammidon, of Greenfield, Mass.

Cross-int. 17. Then you did think it important to make a copy of the receipt sent to the Eureka Company, out of your usual practice, did you?

47 Ans. I thought it might be.

Cross-int. 18. You have said, in answer to direct interrogatory twelve, that Exhibit M, C. W. T., Examiner, was received and filed by you among the company's letters; what did you mean by filed?

Ans. The writer's name was written on the outside of the envelope, and it was put with other letters received about the same time.

Cross-int. 19. Was it "filed" in the same way as you filed all other letters received by the company?

Ans. It was.

Cross-int. 20. Do you preserve the envelopes of all letters received by the company?

Ans. I do.

Cross-int. 21. Did you ever see in your company's office, or about the premises, any other wringing machine, purporting to be made by the Eureka Company, than the one you call the sample machine?

Ans. I have, several.

Cross-int. 22. Before March, 1866?

Ans. They are frequently sent there for repairs; some before that time.

Cross-int. 23. Did you ever see one there prior to March, 1866, which was not sent there to be repaired?

Ans. Yes, sir. A man brought one there to trade for a better wringer.

Cross-int. 24. Who was the person, and when?

Ans. I can't tell who the person was; it was several months before this time you refer to.

Cross-int. 25. Is that the only machine of that kind that you ever saw there prior to March 24, 1866, except those sent there to be repaired?

Ans. It is the only one I now remember of.

Cross-int. 26. (De bene esse.) You have stated that you sent the receipt for the fifty dollars to the Eureka Company by mail; did you deposit that receipt in the post office?

Ans. I cannot tell. I either deposited it myself or sent it, as was usual, with my letters.

Cross-int. 27. Are you willing to swear positively that that machine, the sample machine, was not in your company's office, or about the premises, prior to the 24th of March, 1866?

48 Ans. It was not in the company's office, and I think not on the premises—not to my knowledge.

Cross-int. 28. How are you enabled to state positively that it was not there prior to that date?

Ans. About the time, or at the time that the Eureka Company were taking license, I asked Mr. Bailey if he had finished up with the company. He replied that they had taken out papers, and were to send their sample machine by express, so that when the machine came I was expecting it.

Cross-int. 29. Then you fix the time by reference to the date of the paper called the license, do you?

Ans. Mainly.

FRIDAY, *May* 31.

Cross-int. 30. Please state whether you are familiar with the handwriting of Mr. Bailey.

Ans. I am.

Cross-int. 31. Are not the words and figures "Eureka, Oct. 1, 1865," on the lower roll of the so-called sample machine, in his handwriting?

Ans. I should think not.

Cross-int. 32. Is not the filling up in manuscript of Exhibit A, C. W. T., Examiner, or most of it, in his handwriting?

Ans. I recognize some of his writing here.

Cross-int. 33. What part?

Ans. I should say the filling of the first half.

Cross-int. 34. Please examine the check now shown you, and marked Exhibit 1, C. W. T., Examiner, and state whether that is the check for fifty dollars about which you have testified here.

Ans. I should think it was.

Cross-int. 35. Have you any doubt about it?

Ans. I don't think I have.

Cross-int. 36. Is the writing on the rolls referred to in cross-interrogatory thirty-one, in your judgment, in the handwriting of any person connected with the plaintiff company?

Ans. I do not recognize it.

Cross-int. 37. Are you willing to swear that, according to the best of your judgment and belief, it is not the handwriting of Mr. S. A. Bailey?

49 Ans. I should think it was not his writing.

Cross-int. 38. Is that the only answer you are willing to give to that question?

Ans. In my judgment, it is not the handwriting of S. A. Bailey.

Direct resumed:

Int. 19. Have you any means of determining, other than you have already given, any distinction in appearance between those Eureka machines which you state has been brought to the company's office or shop for trade or repair, and the sample machine before you? If so, please state it.

Ans. The sample machine is the only new machine that I remember

to have ever seen on the premises of the company. I refer, of course, to the Eureka machines.

Int. 20. Whether or not you, as treasurer, sent any blank forms for monthly returns to the Eureka Company after March 24, 1866?

Ans. They were sent monthly until about the time of the commencement of these suits.

Int. 21. Look at the inscription on the upper roller of the sample machine, and say if you recognize the handwriting.

Ans. I do not.

JOHN P. WHIPPLE.

Deposition of Simeon S. Cook.

FRIDAY, *May* 31.

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Simeon S. Cook; age, thirty years; reside at Woonsocket, R. I.; my business is in the India-rubber business, and also in the sale of wringing machines.

Int. 2. Whether or not you had any business with the Eureka Clothes Wringing Machine Company in 1866?

Ans. Yes, sir; I did.

Int. 3. Look at Exhibit K, C. W. T., Examiner, and state whether you received that letter.

Ans. I did.

Int. 4. Look at letter signed Eureka C. W. M. Co., T. J. Alex-
50 ander, agent, dated Waltham, Mass., March 27, 1866, marked Exhibit O, C. W. T., Examiner; and also letter dated Waltham, Mass., April 18, 1866, signed T. J. A., and made Exhibit P, C. W. T., Examiner, and say whether these letters were received by you, and when were they received.

Ans. They were. They were probably received within a day or two of the time they are dated.

Int. 5. Do you know said T. J. Alexander, and have you had personal interviews with him?

Ans. I do know him, and I have had personal interviews with him.

Int. 6. State if anything came in Exhibit K, C. W. T., Examiner, for plaintiff, and what did you do with it.

Ans. A check for fifty dollars. I gave it to the treasurer of the Bailey Washing and Wringing Machine Company.

Int. 7. Look at Exhibit No. 1, and say whether or not you recognize it.

Ans. I do recognize it.

Int. 8. State when you first saw it, and what you did with it.

Ans. On receipt of letter dated May 17, 1866, I passed it to the treasurer of the Bailey Washing and Wringing Machine Company. I have not seen it since till now.

Int. 9. Did you or not take a receipt in full from the plaintiff at that time?

Ans. I could not say.

Int. 10. State whether or not you had any conversation with Mr. Alexander prior to your receiving Exhibit P, C. W. T., Examiner, concerning the subject last mentioned in that letter.

Ans. Yes, sir; I did.

Int. 11. Please give the substance of it.

Ans. Mr. Alexander wished me to see S. A. Bailey, and have him send a receipt in full for machines manufactured previous to their taking a license.

Int. 12. Had your rubber company before then, or were they or not then having any business transactions with the Eureka C. W. M. Co.; and, if so, of what nature?

Ans. They were; they were having their rolls manufactured. I mean the rubber that goes on to the rolls.

51 Int. 13. What person did the business with you for the Eureka Company?

Ans. Mr. T. J. Alexander.

Int. 14. Did you deliver the roller-covers ordered by him in those letters, marked K, O, and P, and who paid you for them?

Ans. We shipped them from the factory, and were paid by checks, as the bills came due, signed T. J. Alexander, agent. There may have been instances where they paid me money, but usually checks.

Int. 15. Do you know how many rubber roller-covers your company delivered to the Eureka Company after March 24, 1866?

Ans. I do not.

Int. 16. Have you any means of telling?

Ans. I have, by looking at the books of the company.

Int. 17. Is Exhibit P in the same handwriting as K and O?

Ans. I should say it was.

Int. 18. Do you know S. B. Rindge; and, if so, have you or not ever done any business with him concerning the Eureka Company and the Roller Rubber Company?

Ans. I do know him. I met with him and the other directors of the Eureka Company, to show them a sample of the rubber that we manufactured for wringing machines.

Int. 19. State when and where this was, and who were present as representing the Eureka Company.

Ans. It was some time in 1865, at S. J. Dennis' office, in Boston; Mr. Dennis, Mr. Rindge, Mr. Alexander, and, I think, Mr. Tower, were present. There was another gentleman present; I can't think his name.

Int. 20. Was there or not any sign of the Eureka C. W. M. Co. affixed to the building where this interview was?

Ans. It was not affixed to this store where we were. One or two doors from there was a sign.

Int. 21. What was said or done at that interview that indicated to you that the gentlemen you have named were directors or officers of the Eureka Company?

Ans. I do not know as there was anything said at that meeting that indicated they were directors.

Int. 22. What was said or done before this meeting to indicate that these were directors, or any of them?

52 Ans. The information I got that they were was from Mr. Alexander.

Int. 23. State the circumstances, and what it was.

Ans. I called at the office of the Eureka Clothes Wringing Machine Company, and showed Mr. Alexander a wringing-machine roll, and the manner in which the rubber was fastened to the shaft, and he wanted me to show it to the Eureka Company, and I met with these gentlemen that I here speak of in Mr. Dennis' office, at the request of Mr. Alexander.

Int. 24. Did you obtain any orders from said company for this improvement you showed them there?

Ans. I did. I got an order, after showing them this manner of fastening the rubber to the shaft, from them.

Int. 25. Have you any letters in your possession from the Eureka

Company signed by Mr. Alexander for them relating to their business with your rubber company?

Ans. I think I have.

Int. 26. Will you produce them?

Ans. I will. I can't produce them to-day.

Int. 27. This improvement you showed the defendants at Mr. Dennis' office, was it patented; if so, by whom, and when?

Ans. It was patented by a man named Holt, at Providence. The dates I cannot give you.

Int. 28. What was the name of your rubber company?

Ans. Woonsocket Rubber Company.

THURSDAY, *July* 25, 1867.

Int. 29. Did you personally or as treasurer of the Woonsocket Rubber Company ever have any claim against the Eureka Company for tariff or license money?

Ans. No, sir.

Int. 30. State whether or not the Eureka Company ever paid you personally, or as treasurer of the Woonsocket Rubber Company, anything for tariff or license upon anything, except as previously testified to by you.

Ans. No, sir.

S. S. COOK.

53 *Deposition of David Lyman.*

FRIDAY, *September* 13, 1867.

Int. 1. Please state your name, age, residence, and occupation.

Ans. My name is David Lyman; age, forty-seven; reside in Middlefield, Conn.; I am a farmer and manufacturer.

Int. 2. What was your business in March, 1866?

Ans. My interest in manufacturing is now, and was then, as stockholder, director, secretary and treasurer, and general managing agent of the Metropolitan Washing Machine Company, of Middlefield, Conn.

Int. 3. State whether or not, previous to the 24th of March, 1866, you, as agent of the Metropolitan Washing Machine Company, entered into any treaty of or bargain with the Eureka Clothes Wringing Machine Company. If yea, state who represented the said Eureka Company.

(Objected to.)

Ans. I did, in relation to granting them a license under the John Young patent, in which our company, and Haley, Morse & Boyden were interested. Some of the parties who represented them were S. J. Dennis, Samuel B. Rindge, and L. L. Tower.

Int. 4. State whether or not you were, in March, 1866, the agent for the John Young patent, or had the management of same.

Ans. Yes.

Int. 5. Was it or not a part of your duty to grant licenses to parties to use said patent, or portions of the same?

(Objected to; the authority being in writing should be produced.)

Ans. There was no writing by which it was made my duty to grant licenses. Our company and Haley, Morse & Boyden granted licenses to parties authorizing them to manufacture wringing machines under the John Young patent.

Int. 6. State whether or not the Eureka Clothes Wringing Machine Company ever took a license, to your knowledge, under the John Young patent. If yes, when?

(Objected to.)

Ans. Yes, on the 24th March, 1866.

Int. 7. Who executed said agreement on the part of the Eureka Company?

Ans. S. B. Rindge.

54 Int. 8. State whether or not you were present during the month of March 1866, at any conversation between S. A. Bailey, agent of the Bailey Washing and Wringing Machine Company, and S. B. Rindge, treasurer of the E. C. W. M. Company, and T. J. Alexander, agent of said company.

Ans. I was present on the 24th of March, when a conversation took place between Mr. Bailey and Mr. Tower and Mr. Rindge. I cannot state as to Mr. Alexander.

Int. 9. Where did said conversation take place, and who were present? (Objected to.)

Ans. In W. G. Russell's office, in this city. Mr. Russell and, I believe, Mr. Howe were present.

Int. 10. State all that was said at that conversation that you recollect.

(Objected to.)

Ans. Before closing the stipulations for the settlement of a suit pending between the M. W. M. Company and Haley, Morse & Boyden, as plaintiffs, and the E. C. W. M. Company, as defendants, I remarked that I wished to know whether there was to be litigation between the E. C. W. M. Company and the B. W. & W. M. Company; and then those two parties, Mr. Rindge and Mr. Tower, on behalf of E. C. W. M. Company, and Mr. Bailey, on behalf of the B. W. & W. M. Company, commenced negotiations. I cannnot remember all that was said; but in the course of the conversation I was asked my opinion as to the validity of the John Allender patent. I stated that although at one time I had supposed its claims were too broad, yet, after great expense and research, I had been unable to find proofs by which, in my opinion, they could invalidate the patent. They endeavored to induce Mr. Bailey to accept of a lower tariff than the price he asked, but finally consented to his terms, and agreed to execute the papers. Immediately after this the license papers between the E. C. W. M. Company, as licensees, and the M. W. M. Company and Haley, Morse & Boyden, as licensors, were executed, Samuel B. Rindge executing the papers in behalf of the E. C. W. M. Company. During these negotiations Mr. Rindge affirmed in the most positive manner, that any settlement then made would be carried out

55 by the E. C. W. M. Company, and that whatever he executed would be binding upon the E. C. W. M. Company. I am very positive Mr. Tower stated the same thing, but cannot say positively; but will state that he left the impression upon me that he indorsed what Mr. Rindge said in that respect.

Int. 11. State, if you know, what Mr. Tower's connection at that time was with the E. C. W. M. Company.

Ans. I understood him to be a director.

Int. 12. Were you or not present at the signing of the papers between the B. W. and W. M. Company and the E. C. W. M. Company?

Ans. I think I was not. I am not certain.

Int. 13. State, if you know, whether or not the E. C. W. M. Company have carried out the stipulations in the license papers with the M. W. M. Company, and Haley, Morse & Boyden, as previously testified by you.

Ans. I suppose they have.

Int. 14. Whether or not they have paid any tariff money under said

license to the licensors; and, if yea, whether they still continue to do so?

Ans. Yes; and I believe they continue so to do.

Cross-examination:

Cross-int. 1. How did your company, the M. W. M. Company, and Haley, Morse & Boyden acquire the right to grant licenses under the John Young patent?

Ans. By purchasing of John Young the exclusive right to manufac-[fac]ture and license under the same, except a certain number that John Young had a right to manufacture himself.

Cross-int. 2. Did your company and Haley, Morse & Boyden acquire that right by an instrument or instruments in writing?

Ans. Yes.

Cross-int. 3. Please produce such instrument or instruments, that it or they may be annexed to your deposition.

(Objected to.)

Ans. I have not the instrument with me.

Cross-int. 4. Where is it?

(Objected to.)

Ans. I think it is in Middlefield, in my safe, at home.

56 Cross-int. 5. Will you send it to the examiner, that he may annex it, or make a copy to be annexed to your deposition?

(Objected to; and also to the production of the paper.)

Ans. I will.

Cross-int. 6. What consideration did your company and Haley, Morse & Boyden give John Young for the interest which you acquired by that instrument in his patent?

(Objected to.)

Ans. We paid him for our interest $2,500.

Cross-int. 7. How and in what manner was the $2,500 paid; was it in cash, note, or otherwise?

(Objected to.)

Ans. Partly cash, and partly in notes which were paid at maturity. We also paid all his expenses attending the extension of his patent and obtaining reissues. We also allowed him to use a patent we were interested in.

Cross-int. 8. Was there not one or more suits between Haley, Morse & Boyden and your company pending at or about the time of the purchase of the John Young patent?

(Objected to.)

Ans. No. There was at one time a suit pending between Haley, Morse & Boyden and the Metropolitan Washing Machine Company; but that suit was settled before I was aware of the existence of the John Young patent; and I do not think Haley was aware of its existence at the time we settled.

DAVID LYMAN.

Deposition of Selden A. Bailey (de bene esse.)

NOVEMBER 22, 1867.

Int. 1. You have given a previous deposition in this case, have you not?

Ans. I have.

Int. 2. Whether or not at the time the Exhibits A and B were signed, on Monday, March 26, 1866, Mr. Rindge stated to you that he had no authority as treasurer to sign the agreements, but that if you

57 were willing to take his signature without authority from the company, he would sign it, or words substantially like these?

Ans. I did not hear him make any such statement.

S. A. BAILEY.

Deposition of William G. Russell, esq.

NOVEMBER 22, 1867.

Int. 1. Please state your name, age, residence, and occupation.

Ans. My name is William G. Russell; age, forty-six; reside in Boston; I am counsellor-at-law.

Int. 2. Whether or not you were present at any conversation on the 24th March, 1866, between David Lyman and Samuel B. Rindge?

Ans. I was.

Int. 3. In what capacity, if any, were you acting, and what was the object of the interview at which that conversation took place?

Ans. I was acting as counsel for the Metropolitan Washing Machine Company, of which corporation Mr. Lyman was the representative. The interview was at my office; Mr. Rindge being present as the treasurer of the Eureka Clothes Wringing Machine Company, against which I had brought a suit in equity for infringement of a patent in behalf of the Metropolitan Washing Machine Company. Mr. Howe, the counsel for the Eureka Company, was also present, and the object of the interview was the adjustment of that suit, and of the controversy between the parties.

Int. 4. Whether or not during that interview Mr. Rindge stated to you and Mr. Lyman that he had no authority to sign any agreement as treasurer of the Eureka Clothes Wringing Machine Company with Mr. Lyman, and repeated the statement, or words substantially the same?

Ans. No such statement was made in my hearing.

W. G. RUSSELL.

58 *Deposition of W. C. Hibbard.*

BOSTON, *January* 10, 1868.

Int. 1. Please state your name, age, residence, and occupation.

Ans. My name is William C. Hibbard; age, fifty-three; reside in West Roxbury; I am a mechanical engineer.

Int. 2. What opportunities have you had for becoming familiar with mechanics and mechanical operations, particularly in their application to patents and patented articles, and to questions arising in patent causes?

Ans. I have been during the whole active part of my life engaged in mechanical pursuits, and particularly in the designing and constructing machinery, and for the sixteen or seventeen years last past have given considerable attention to the examination and comparison of machines and inventions, and have acted as an expert in mechanics during that time in the trial of patent causes.

Int. 3. Have you examined and are you familiar with the patent granted to John Allender, January 11, 1859, and reissued April 18, 1865, No. 1934, for a new and improved wringing machine, and do you fully understand the mechanical construction and operation of the machine made according to the same?

Ans. I have examined a certified copy of the patent inquired of, and believe I fully understand the construction and operation of the machine therein represented.

Int. 4. Please examine the wringing machines now shown you, and marked respectively D, C. W. T., Examiner, and R, C. W. T., Examiner, and state whether you understand their mechanical construction and operation.

Ans. I have examined the machines, and believe I fully understand their construction and operation.

Int. 5. State whether or not the machine marked R, C. W. T., Examiner, is substantially the same in its mechanical construction and operation as the machine marked D, C. W. T., examiner; if yea, state fully and particularly the points of identity and substantial identity between the two machines, and the points of difference between them, and state whether or not said differences, if any there be, so change the
59 machine that it does not contain substantially the mechanism that the other does.

Ans. The two machines inquired of appear to me to be precisely alike in every respect that pertains to their operation as squeezing or wringing machines, both consisting substantially of a pair of elastic rollers, carried upon the two ends of a pair of C springs, which serve both to press the rollers together and as a housing for the same, to keep them in their relative position. They differ a little in their size; I see no other difference. They differ somewhat in the clamps or means of fastening the same to the tub, in Exhibit D the clamps being rigidly attached to the frame of the machine, and in Exhibit R they are attached to the frame by swinging joints; but this last difference does not, in my judgment, in any manner affect their operation as wringing or squeezing machines.

Int. 6. State whether or not the machine marked R, C. W. T., Examiner, is substantially the same in its mechanical construction and operation as the machine set forth in the patent reissued to John Allender, April 18, 1865, No. 1934, as his invention. If yea, state fully and particularly the points of identity between the said machine and that set forth in the said John Allender's reissued patent as his invention, and the points of difference between them; and state, whether or not said differences, if any there be, so change the machine that it does not contain substantially the mechanism set forth as the invention of said Allender in said reissued patent.

Ans. The machine R is, in my opinion, substantially the same in construction and operation as the corresponding mechanism in the said Allender reissue. Allender's machine, as shown in the patent, contains some devices for which there is nothing to correspond in Exhibit R; as, for instance, the gears upon the rolls and the adjusting screws to adjust the pressure upon the rolls; and also, perhaps, the interior construction of the rolls, but of that I cannot judge for certainty, as the interior structure of them in the exhibit cannot be seen; but the Exhibit R has two elastic rollers covered with rubber, pressed towards each other with springs, with what is known as a yielding pressure, between which the clothes to be operated upon are progressively drawn by turning them; the pressure thus exerted upon the clothes serving to squeeze the water out of them. Precisely the same elements are found in the Allender
60 patent, co-operating precisely in the same way to produce precisely the same result. The differences between this machine and the machine described in the Allender reissue appear to be confined to the difference of material of which the frames of the two machines are made, and the form in which they are constructed, and in the omission from the Exhibit R of some of the subordinate parts found in Allender's machine, as I have before stated, and also in having means for attaching

the same to the side of a tub, which is wanting in the Allender machine, which is shown as fastened to a bench upon which the tub might be rested. These differences do not, in my judgment, affect the mode of operation of the machines. The devices found in the Allender machine, which are not to be found in Exhibit R, do not change substantially the mode of operation of the machine, but only serve to enable it to perform its legitimate operation more perfectly. There is to be found in Exhibit R the same substantial combination of elastic rollers, pressed together by adjusting springs, that is to be found in the Allender machine, and is the combination which enables the machine to operate usefully as a wringing machine.

Cross-examination:

Cross-int. 1. Did you mean to be understood by your answer to the sixth direct interrogatory as saying that, in your judgment, there is no substantial difference between the rolls shown in the Allender patent and the rolls of Exhibit R, in their mechanical construction and operation?

Ans. I meant to be understood that, in my judgment, there was no substantial difference in their mode of operation: but as to the mechanical construction of the rollers themselves I cannot answer, but should think quite likely that their interior construction is different from that shown in Allender's patent, as they are much smaller in diameter. The essential property of the rollers which enables them to act efficiently is, that their surfaces are made very elastic, or so that they will have the capacity to adapt themselves to the varying surface of the clothes which are passed between them. The rollers in Exhibit R, and the rollers in the Allender machine both have that property, and operate on the clothes in the same way.

Cross-int. 2. Please read the description of the construction of
61 the roll contained in the specification of said Allender patent, and examine the drawings of said roll, and state particularly the features or parts, if any, in which the rolls of Exhibit R differ therefrom.

Ans. As I before stated, I cannot tell whether the interior of the rollers of Exhibit R are constructed like, or different from, the rollers represented in Allender's patent, because there is nothing upon the exterior of the rollers which shows how the interior is constructed, except their size, which would seem to indicate that there was not space within the rubber covering to place the case L, and the coil spring J, shown in Allender's patent. If such is the case, I should think probable that the whole mass of the roller, except the shaft, was made of rubber.

Cross-int. 3. Do you mean to be understood that, in your judgment, there is no difference between the rolls of Exhibit R and the Allender rolls in their mechanical principles of action?

Ans. I do.

Cross-int. 4. Suppose the bearings of the rolls of Exhibit R be rigidly fixed in relation to each other, would the rolls in that case produce the same result in kind and degree in their action upon clothes passed between them in the process of squeezing as the Allender rolls would with fixed bearings in their relation to each other, the same condition of quantity and disposition of the clothes to be squeezed being observed in both cases?

Ans. They would have the same kind of action upon the clothes in any quantity adapted to the capacity of Exhibit R, and I think to about

the same degree, although the capacity of the rolls constructed, as shown in the Allender patent, to adapt itself to the clothes is probably greater than that of the roll in Exhibit R.

Cross-int. 5. In that case—that is, in the case where the rolls are rigidly fixed—could you not readily and freely pass through the Allender rolls a given thickness of cloth which you could not pass through the rolls of Exhibit R?

Ans. I think it quite likely, though I cannot tell certainly, as I never tried the experiment.

Cross-int. 6. Is not the rubber roll in Exhibit R, so far as you can judge, placed upon and in immediate contact with the iron shaft?

62 Ans. It is, for anything I can see. I cannot answer more definitely, as the ends of the rubber are partially covered by washers on the iron shaft.

Cross-int. 7. Is not the rubber covering of the rollers in the Allender patent shown as placed upon a flexible or yielding cylinder formed by a coiled flat band of steel?

Ans. It is.

Cross-int. 8. Then you mean to be understood that, in your judgment, this difference in their mechanical construction makes no difference in principle between them?

Ans. Not exactly so. It is a difference in principle as to the mode of constructing an elastic roller, while there is no difference in principle as to the mode in which the elastic rollers operate upon the clothes.

Cross-int. 9. Then in your view of substantial identity between elastic rollers in their operation as parts of wringing machines, all elastic rollers, whatever may be their construction, are substantially alike, are they not?

Ans. I cannot tell without examining them.

Cross-int. 10. Please explain your answer to cross-interrogatory eight, and state what you mean by a difference in principle in the mode of constructing an elastic roller, used in a wringing machine, while there is no difference in principle as to the mode in which the rollers operate.

Ans. I mean that the mechanical means by which the necessary elasticity is obtained is different in one from what it is in the other.

Cross-int. 11. Please state what are the mechanical means by which the elasticity in Exhibit R is obtained?

Ans. It is obtained, as I suppose, from the mass of rubber which forms the roller outside of the shaft.

Cross-int. 12. Please state what are the mechanical means by which the elasticity in the Allender roller is obtained.

Ans. The elasticity of the rubber covering, aided by the coiled spring within the same, which rests upon the solid case of the roll at each end only.

Cross-int. 13. Please examine the specification of letters-patent granted to Joseph Jessop by the British government, numbered 2588, and dated A. D. 1856, as contained in volume twenty-one of Specifications of Inventions now shown you, and say whether, as you un-

63 derstand substantial diversity and identity between machines, the wringing machine therein described and shown in the drawings of said patent, also now shown you, is not, in all respects, substantially in its construction and mode of operation the same as the machine described in the Allender patent. If not, state particularly wherein they differ in those respects, or either of them.

(Objected to.)

Ans. I have examined the English patent mentioned in the question,

and find that the machine there represented for mangling and wringing is not like the machine represented in the Allender patent, because it has no elastic rollers for squeezing the clothes; but, instead thereof, hard rollers, which also appear to have been intended to be used for the purpose of mangling or callendering clothes. The rollers have no capacity whatever of adapting themselves to the surface of the clothes. In their operation they appear to be a pair of common squeezing rollers.

Cross-int. 14. Please examine volume fourteen, Specifications of Inventions granted by the British government, numbered 1478, dated A. D. 1857, May 25, to William G. Underhill, for improvements in wringing machines, and state whether the machine referred to in the preceding answer, and described in the said British patent, would differ substantially from the Allender patent, if the rolls described in the said Underhill patent were substituted for those which you understand to be non-elastic rollers in the Jessop machine.

(Objected to.)

Ans. In the patent of Underhill no machine is described; the subject-matter of that patent relates to the manufacture of elastic rollers to be used in wringing machines. Two methods of making such rollers are mentioned—one by placing a number of stout vulcanized rubber rings upon a spindle, and fastening them at each end by screws in some manner not clearly described; and the other mode of constructing is by fixing a tube of India rubber of sufficient thickness upon a spindle. If a roller made by the last method, with sufficient thickness of rubber to give proper elasticity to the surface of the roller, were placed in the Jessop machine before mentioned, I think it would operate as a wringing machine substantially like the Allender machine; but in the manner
64 of making the roll by itself it would be different from the mode described in the Allender patent.

Adjourned to Wednesday, January 16.

WEDNESDAY, *January* 16.

Cross-examination continued:

Cross-int. 15. Would the roller referred to by you in the preceding answer, made after the manner of the second method described in the Underhill patent, differ substantially from the rollers in Exhibit R?

(Objected to.)

Ans. I cannot tell, because I do not know precisely how the rollers in Exhibit R are constructed in the interior.

Cross-int. 16. Please examine the rollers of Exhibit R, and state how, in your judgment, they are constructed.

Ans. So far as I can see, they are formed with a shaft, and a rubber cover of considerable thickness; but whether there is anything between the rubber and the shaft I cannot tell, because the ends of the rubber are covered, to a considerable extent, by washers, which appear to fit close upon the shaft, and conceal a considerable part of the end of the roller.

Cross-int. 17. So far as you can judge, from such examination as you are able to make, are they not made substantially after the manner of the second method described in the said Underhill patent?

Ans. I cannot answer any more fully than I have already done in that respect.

Cross-int. 18. Suppose those rollers to be made of a tube of India rubber, fixed upon the spindle, would they be substantially the same as the rollers described in the second method in the said Underhill patent?

(Objected to.)

Ans. They would.

Cross-int. 19. Please examine volume 110 of the Specifications of English Patents, and examine provisional specification, numbered 2548, A. D. 1855, of William Carr Thornton and Benjamin Thornton, and state whether the description therein contained is not substantially of a roller for a wringing machine like the rollers in Exhibit R.

(Objected to.)

65 Ans. I have examined the provisional specification mentioned in the interrogatory, and do not find a roller described therein substantially like the rollers in Exhibit R. The description given, which is very short, is for a method of covering rollers for spinning and drawing machines with vulcanized India rubber by forming the rubber into a tube and drawing it on over the roller, taking the place of leather covering usually employed in such mechanism. This covering is made thin, and of course has no great extent of elasticity. The same kind of covering is also suggested as being applicable to the covering rollers used in washing and wringing machines for wool, which I suppose to mean the ordinary squeezing rollers, such as were then in common use in this country, and, as I suppose, in England.

Cross-int. 20. Do you mean to be understood as saying that you infer that the rubber covering for the rollers described, when used in wringing machines, would be so thin as to make thereby the substantial difference between those rollers and the rollers in Exhibit R?

Ans. That is the reason, partly; the idea that I get from the description is, that the rubber serves merely as a covering for the squeezing rolls as it does for the drawing rolls, not having sufficient elasticity of surface to give them, practically, any capacity of adapting itself to the variations of surface of the material to be passed through them. The material upon which it was intended to operate, where such coverings were used, did not require that capacity of adaptation which a clothes-wringing machine requires, where the difference in thickness in different parts of the clothes, while between the rollers, is very considerable.

Direct examination resumed:

Int. 7. (De bene esse.) Whether or not in the first or second description of the manner of covering the roll in the said Underhill patent, referred to in the cross-examination, there is any description of the manner in which the rubber is to be fastened to the roll so as to make it particularly useful for a wringing-machine; if not, why not?

Ans. The method first described of placing rubber rings upon a spindle, and fastened at either end by screws, is not clear as to how the ends were constructed precisely; but, in any event, it could not confine the intermediate rings properly, so as to prevent them from working upon the shaft and against each other, which, in practice, would very

66 soon destroy them, or make them so loose that they would not operate, and the joints also would discharge from them the dirty water mixed with the debris of the rubber and deposit it upon the materials being squeezed. In the description of the second mode of constructing the roller—namely, by fixing a tube of rubber of sufficient thickness upon a spindle—there is no means whatever described for connecting the rubber with the spindle, and without such means the rollers would not be practically useful, in my opinion.

Cross-examination resumed:

Cross-int. 21. Do you understand from your reading of the Underhill patent that there are but two methods indicated of applying the rubber to form the rolls of the wringing machines?

(Objected to.)

Ans. I understand that there are but two modes described with any definiteness, and those are the two which patentee says he prefers.

WM C. HIBBARD.

Deposition of Hervey Waters.

JANUARY 21, 1868.

Int. 1. State your name, age, residence, and occupation.

Ans. My name is Hervey Waters; age, sixty-three years; reside in Boston; am a machinist.

Int. 2. What opportunities have you had for becoming familiar with mechanics and mechanical operations, particularly in their application to patents and patented articles, and to questions arising in patent causes?

Ans. I have been engaged as a machinist in constructing machines as apprentice, journeyman, and master since I was nineteen years old. For some eighteen or nineteen years back I have been in the habit of testifying in patent cases as an expert.

Int. 3. Have you examined and are you familiar with the patent granted to John Allender, January 11, 1859, and reissued April 18, 1865, numbered 1934, for a new and improved wringing machine,
67 and do you fully understand the mechanical construction and operation of the machine made according to the same?

Ans. I have examined the patent inquired of, and believe I understand substantially the machine therein described.

Int. 4. Please examine the wringing machines now shown you, marked respectively D, C. W. T., Examiner, and R, C. W. T., Examiner, and state whether or not you understand their mechanical construction and operation.

Ans. I have examined the machines, and believe I understand them substantially.

Int 5. State whether or not the machine marked R, C. W. T., Examiner is substantially the same in its mechanical construction and operation as the machine marked D, C. W. T., Examiner. If yea, state fully and particularly the points of substantial identity between the two machines, and the points of difference between them, and state whether or not said differences, if any there be, so change the said machine marked R that it does not contain substantially the mechanism that the machine marked D does.

Ans. The machine marked R is substantially the same as the machine marked D. The two machines, in fact, are just alike, with the exception of the clamps for attaching the respective machines to the tub. The machine marked R has the clamp jointed to the frame of the machine so that it will more readily accommodate itself to the different curvatures of different tubs; while the clamps in the machine marked D are rigidly attached to the frame of the machine, and are a part of it.

Int. 6. State whether or not the said machine marked R is substantially the same in its mechanical construction and operation as the machine set forth in the patent reissued to John Allender, April 18, 1865, No. 1934, as his invention. If yea, state fully and particularly the points of identity between the said machine R and that set forth in the said John Allender's reissued patent as his invention, and the points of difference between them, and state whether or not said differences, if any there be, so change the machine that it does not contain substantially the mechanism set forth as the invention of said Allender in said reissued patent.

Ans. It is substantially the same, in some important features, as that described in that patent. It is substantially the same in its con-
68 struction and mode of operation, in having elastic water-proof rollers suitable for adjusting themselves to the figure or figures which the clothes will assume in passing between said rollers, and in connection therewith adjusting springs combined with the rollers in such a manner as that the adjustment first spoken of shall, by means of the springs, become enlarged when necessary. It differs from the machine described in the patent in several particulars. The first is, the rollers, as I understand the machine, have not the internal arrangement referred to in the first claim of the patent, and therefore have not the same degree of capability to adjust themselves to large figures which may be assumed by clothes when passed between them, but they have vulcanized rubber rolls of such thickness as to be capable of adjusting themselves to figures of considerable magnitude. In consequence of this difference of internal arrangement, they also differ from the patented machine as to their capability of yielding more at the centre than at the ends in the manner referred to in the second claim of the patent. Moreover, the machine marked R differs from the machine described in the patent in having no cog-wheels in combination with rollers of vulcanized rubber; and it also differs from the machine described in the patent in being without adjusting screws for the purpose of increasing or decreasing the tension of the adjusting springs to the rollers, after the manner referred to in the sixth claim. These differences which I have mentioned do not change the mode of operation of the machine marked R in the combined action of the rubber rolls and the adjusting springs.

WEDNESDAY, *January* 29, 1868.

Int. 7. Please examine the machine now shown you, and marked Exhibit "Allender Machine," C. W. T., Examiner, and state whether or not it is made according to the description contained in the said Allender reissued patent.

Ans. This machine corresponds with the description of the machine in the patent inquired of.

Cross-examination:

Cross-int. 1. If you should direct a mechanic to build for you a wringing machine substantially like Exhibit R, and he should bring you a machine like the exhibit marked "Allender Machine," would you consider that he had complied with your order or direction?

Ans. I should not.

HERVEY WATERS.

69 COMPLAINANT'S EXHIBITS.

[*Exhibit H, C. W. T., Examiner.*]

State of Rhode Island and Providence Plantations, in general assembly, May session, A. D. 1865.

An act to incorporate the Bailey Washing and Wringing Machine Company.

[*It is enacted by the General Assembly as follows:*]

SECTION 1. Selden A. Bailey, Simeon S. Cook, Benedict M. Cook, Albert Cook, Horace Cook, and their associates, successors, and assigns, are hereby constituted a corporation, by the name of the Bailey Wash-

ing and Wringing Machine Company, for the purpose of manufacturing washing and wringing machines, and for the transaction of other mechanical and manufacturing business connected therewith, with all the powers and privileges, and subject to all the duties and liabilities, set forth in chapters 125 and 128 of the revised statutes, and of the statutes in amendment thereof and in addition thereto.

SECTION 2. The capital stock of said company shall consist of twenty-five hundred shares, of one hundred dollars each; and the said number of shares may be increased, by vote of the company, to a number not exceeding five thousand; and such shares are hereby declared to be personal estate; and they shall not be liable to assessment by the corporation beyond the par value thereof; and said shares shall be transferable, and certificate shall be issued to the owners thereof, in such manner as said corporation may prescribe.

SECTION 3. There shall be held an annual meeting of the stockholders of said corporation at such time as the by-laws shall prescribe; but the omission of the stockholders to hold said annual meeting on the day provided shall not impair the validity of their charter; but the business of such annual meeting may be transacted at any legal meeting of the corporation held thereafter.

SECTION 4. The stock or shares of every shockholder shall be pledged and liable to the corporation for all debts and demands due and owing from such stockholder to the corporation, whether over due or due at a future day, and whether arising from assessments, or in any other manner; and said shares may be sold for the payment of such debts and demands, in such manner as the corporation may by by-law prescribe; and in case the proceeds of such sale shall be insufficient to satisfy such debts or demands, with incidental expenses of sale, the corporation may have their action against the debtor for the balance due.

SECTION 5. Said corporation shall have a counting-room and place of business in the village of Woonsocket.

I hereby certify the foregoing to be a true copy. In testimoy whereof I have hereto set my hand and affixed the seal of the State this May 14th, 1867.

[L. S.] JOHN R. BARTLETT,
Secretary of State.

[*Exhibit C, C. W. T., Examiner.*]

The United States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of the reissued letters-patent granted Bailey, Cook and Cook, assignees of John Allender, April 18th, 1865, No. 1934.

In testimony whereof I, T. C. Theaker, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this eighth day of January, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of the United States the ninetieth.

[SEAL.] T. C. THEAKER.

Reissue No. 1934.

The United States of America to all to whom these letters-patent shall come:

Whereas Selden A. Bailey, Simeon S. Cook, and Benedict M. Cook, of Woonsocket, Rhode Island, assignees by mesne assignments of John

Allender, of New London, Connecticut, have alleged that said John Allender invented a new and useful improved washing machine,
71 (for which letters-patent were issued to him, dated January 11, 1859, the same surrendered and new letters ordered to issue to said assignees, dated June 28, 1864, which second letters having been surrendered, and new letters ordered to issue to them, dated November 8, 1864, which third letters having been surrendered, the same have been cancelled, and new letters ordered to issue to them on an amended specification,) which he stated had not been known or used before his application; had made oath that he was a citizen of the United States, that he did verily believe that he was the original and first inventor or discoverer of the said invention, and that the same hath not, to the best of his knowledge and belief, been previously known or used; said assignees having paid into the treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents signifying a desire of obtaining an exclusive property in the said invention, and praying that a patent may be granted for that purpose:

These are therefore to grant, according to law, to the said Bailey, Simeon S., and Benedict M. Cook, their heirs, administrators, or assigns, for the term of fourteen years from the eleventh day of January, one thousand eight hundred and fifty-nine, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention, a description whereof is given in the words of the said Bailey, Simeon S., and Benedict M. Cook, in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent Office has been hereunto affixed.

Given under my hand, at the city of Washington, this eighteenth day of April, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the United States of America the eighty-ninth.

[L. S.]

J. P. USHER,
Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.

D. P. HOLLOWAY,
Commissioner of Patents.

72 *The schedule referred to in these letters-patent, and making part of the same.*

To whom it may concern:

Be it known that John Allender, of the city and county of New London, and State of Connecticut, did invent a new and useful roller for squeezing the water, dyeing liquor, etc., from cloth, clothes, etc., and we do hereby declare that the same is described and represented in the following specification and drawings. To enable others skilled in the art to make and use said invention, we will proceed to describe its construction and use, referring to the drawing in which the same letters indicate like parts in each of the figures.

Fig. 1 is a front elevation of a pair of squeezers with said new rollers.

Fig. 2 is a side elevation of the same.

Fig. 3 is a section of said rollers.

The nature of said invention consists in a roller made of a spirally coiled spring, arranged on a shaft or roller made smallest in the middle to allow the spring to yield, which spring is covered with India-rubber

or some flexible material that will yield or bend readily to the cloth, clothes, or other articles being squeezed by the rollers.

In the accompanying drawings, A is the base of the frame of the squeezing rollers, to which the standards B B are fastened. In each of these standards there is a long slot, in which the boxes C of the top roller D and the boxes C of the bottom roller D are fitted to traverse the boxes C, being pressed upwards by the spiral spring E, placed between the bottom of the slot and the box, as shown in Fig 2.

The screws F F act against the top boxes C to press the rollers together, and press them down, and press the boxes C against the spring E to produce the required pressure between the rollers, for the cloth or clothes to be squeezed.

The standards B B are boarded upon each side of the rollers as shown in Fig. 1 at G, and a guide H is fastened to the boarding G to guide the cloth or clothes between the rollers.

The rollers D D consist of a shaft or central roller I made smaller in the middle, as shown in Fig. 3.

This shaft is surrounded by a flat metal spring coiled spirally
73 so as to form a cylinder J of a uniform diameter from end to end, as shown in Fig. 3.

Around this spring cylinder J, there is a cylindrical covering D, made of India rubber or some flexible material that will yield or bend readily as the spring cylinder inside of it yields to the pressure of the cloth or clothes passing between the rollers.

This India-rubber covering is surrounded with a thin hoop K at each end, and is pierced by several spurs L L on the gears M M, which are firmly fastened to the shaft I to make both the rollers turn together, as the cloth or clothes being squeezed passes between them and the water squeezed from the cloth runs from the under roller between the boards G G on to the base A and through the spout N away from the machine.

The central roller E, being made smaller in the middle, allowed the coiled spring cylinder to yield to the varying thickness of the cloth or clothes passing between the rollers.

We believe that we have described and represented the yielding roller which said Allender invented, so as to enable any person skilled in the art to make and use it.

What we claim as new in said invention, and desire to secure by letters-patent, are:

1st. A roller made of a spirally-coiled spring arranged on a shaft or roller made smaller at the centre than at the ends, as and for the purposes specified.

2d. A roller so constructed as to yield more at the centre than at or near its ends, covered with vulcanized rubber or any other elastic compound impervious to water, substantially as and for the purpose set forth.

3d. Cog-wheels in combination with rollers of vulcanized rubber or any other elastic substances or compound impervious to water, for the purpose set forth.

4th. Rollers made of or covered with vulcanized rubber or any other elastic substance or compound impervious to water, when used in combination with cog-wheels, and a spring or springs around the shaft of the roller, for the purpose set forth.

5th. Rollers for washing or wringing machines made of or covered with vulcanized rubber or any other elastic substance or compound impervious to water, when used in combination with adjusting spring or springs.

74 6th. Rollers for washing or wringing machines made of or covered with vulcanized rubber or any other elastic substances or compound impervious to water when used in combination with adjusting spring or springs, and screw or screws, to adjust the pressure to the springs and rollers.

Witnesses:

W'M L. CHASE.	SELDEN A. BAILEY.	[L. S.]
W'M L. CHASE.	SIMEON S. COOK.	[L. S.]
D. F. WILLIAMS.	BENEDICT M. COOK.	[L. S.]

[*Exhibit E, C. W. T., Examiner.*]

The United States Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed are true copies from the records of this office.

In testimony whereof I, T. C. Theaker, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this twenty-fourth day of May, in the year of our Lord one thousand eight hundred and sixty-seven, and of the independence of the United States the ninety-first.

T. C. THEAKER.

This indenture, made this sixteenth (16th) day of October, A. D. 1863, between Thomas Allender, of the town and county of New London, in the State of Connecticut, executor of the last will and testament of John Allender, late of said town, county, and State, of the first part, and Selden A. Bailey, of the town of North Wrentham, in the Commonwealth of Massachusetts, of the second part, witnesseth:

That said party of the first part, by virtue of the authority given to him in and by said last will and testament, for and in consideration of the covenants of said party of the second part hereinafter set forth, and for the sum of seven hundred and fifty dollars, received by said party of the first part, to his full satisfaction of said party of the second
75 part, the receipt of which is hereby acknowledged, have bargained, sold, and conveyed, and do by these presents bargain, sell, and convey, all the right, title, and interest that said John Allender in his lifetime had, and all the right, title, and interest that said party of the first part has, or ought to have, in and to a certain patent right for an improved clothes wringing machine, granted by the United States of America to John Allender aforesaid, by letters-patent dated the eleventh day of January, A. D. 1859:

To have and to hold said patent right to the only use and behoof of the said party of the second part and to his heirs and assigns forever.

Said party of the first part further covenants and agrees, as such executor, with said party of the second part, and with his executors and assigns, to indemnify him in the free use of all the patents for various improvements upon wringing machines heretofore granted to him by the United States from any claim or demand of infringement upon a certain patent right granted by the United States to John Allender aforesaid, by letters-patent dated the 30th day of July, A. D. 1861, and numbered 1950.

And said party of the first part further covenants and agrees to allow said party of the second part to use his name as executor, as aforesaid;

in any suit or proceeding entered into by said party of the second part for the defence and maintenance of said patent right, granted to him as aforesaid, or for the obtaining of a reissue of said patent right from the United States of America.

2 cents. 2 Tho. A. Oct. 13. 2 cents. 2

And in consideration of the promises, said party of the second part covenants and agrees with said party of the first part to indemnify him as executor as aforesaid, and his several brothers, as heirs of said testators forever, in the free use of a certain patent right granted to said John Allender by the United States of America, by letters-patent dated the 11th day of January, A. D. 1863, from any claim or demand of infringement upon the patent right hereby purchased of said party of the first part, numbered 1950, and particularly described in the foregoing instrument. Provided, however, that the last foregoing covenant of indemnity shall not be construed to extend to the heirs or assigns of any of the parties mentioned therein.

40 cents. 40 S. A. B. Oct. 13. 40 cents. 40

76 In witness whereof the parties have hereunto set their hands and seals this 16th day of October, A. D. 1863.

THOMAS ALLENDER, [L. S.]
Executor of Estate of John Allender.
S. A. BAILEY. [L. S.]

Signed, sealed, and delivered in the presence of—
A. P. JOHNSON.
J. H. MANNING.
BENJ. F. PERKINS.
THOMAS M. WALLER.
RICHARD B. HUNTLEY.

Probate office.

STATE OF CONNECTICUT, *District of New London, ss:*

I, Ezra C. Smith, clerk of the court of probate in and for said district, hereby certify that Thomas Allender is the executor of the last will of John Allender, late of New London, in said district, deceased; that said will has been duly proved before said court.

In testimony whereof I have hereunto affixed the seal of said court, and subscribed my name, at New London, this 12th day of December, 1833.

[L. S.] EZRA C. SMITH, *Clerk.*

[*Exhibit F, C. W. T., Examiner.*]

Whereas letters-patent numbered 23436, for improved machine for wringing clothes, dated April 5, A. D. 1859, and numbered 27609, for improvement in wringing machine, ... dated April 29, A. D. 1862, and numbered 35663, for improved rollers for wringing machines, dated June 24, A. D. 1862, have been heretofore issued from the patent office of the United States to Selden A. Bailey, of New London, Connecticut; and whereas letters-patent numbered 22539, for improved roller for expressing water from clothes, issued to John Allender, of said New London, dated January 11, A. D. 1859, have since been sold, assigned, and conveyed by the executor of the will of said John Allender to said Selden A. Bailey:

Now, therefore, be it known that I, Selden A. Bailey aforesaid, in

consideration of certain articles of copartnership between my-
77 self and Simeon S. Cook and Benedict M. Cook, of Woonsocket, Rhode Island, dated December 14, 1863, do hereby assign, transfer, and convey to Selden A. Bailey, Simeon S. Cook, and Benedict M. Cook, trustees of the firm of Bailey, Cook and Company, all my right, title, and interest in and to each and all of said patents and inventions, and to any extension and reissue thereof, and to any inventions I may hereafter make regarding washing and wringing machines, to have and to hold to them and their legal representatives, in trust for said copartnership, under the articles thereof.

Witness my hand and seal this sixteenth day of December, 1863.

SELDEN A. BAILEY. [SEAL.]

In presence of—
A. B. ELY.
Received and recorded Jan. 7, 1864.
Ex'd, A. T.

S.	S.
S.	A. B.
Dec. 16.	
S.	1863. S.

[*Exhibit G, C. W. T., Examiner.*]

Whereas letters-patent numbered 27609, for improvement in wringing machines, dated March 27th, A. D. 1860; and number 35072, for improved wringing-machine cylinder, dated April 29th, A. D. 1862; and number 35663, for improved rollers for wringing machines, dated June 24th, A. D. 1862, have been heretofore issued from the Patent Office of the United States to Selden A. Bailey, of New London, Connecticut; and whereas letters-patent number 22539, for improved roller for expressing water from clothes, issued to John Allender, of said New London, dated January 11th, A. D. 1859, have since been sold, assigned, and conveyed, by the executor of the will of said John Allender, to Selden A. Bailey:

And whereas each and all of the above-named patents have since been assigned, transferred, and conveyed by the said Selden A. Bailey to Selden A. Bailey, Simeon S. Cook, and Benedict M. Cook, trustees for Bailey, Cook & Co.; and whereas said letters-patent issued to John Allender were surrendered, and new letters issued to the said assignees
78 dated June 28th, 1864, which second letters were surrendered and new letters issued to the said assignees, dated November 8th, 1864, which third letters were surrendered, and new letters issued to the said assignees, dated April 18th, 1865:

And whereas letters-patent number 1950, for improvement in wringing machines, dated July 30, A. D. 1861, were issued to the said John Allender, and by the executor of the will of said John Allender sold, assigned, and transferred to Selden A. Bailey, Simeon S. Cook, and Benedict M. Cook, trustees for Bailey, Cook & Company: Be it known that we, Selden A. Bailey, Simeon S. Cook, and Benedict M. Cook, trustees for Bailey, Cook & Company, in consideration of one dollar and other considerations to our full satisfaction, do hereby assign, transfer, and convey to the Bailey Washing and Wringing Machine Company all the right, title, and interest which we hold in each and all of said patents and inventions, and to *my* extensions and reissues thereof, and to any inventions which we may hereafter make regarding washing and wring-

ing machines, to have and to hold to them and their legal representatives.

Witness our hands and seals this twenty-second day of July, 1865.

Witnesses—

WM. L. CHASE.

A. G. PAGE.

S. S. July 22, 1865. A. B. S.

SELDEN A. BAILEY. [SEAL.]

BENEDICT M. COOK. [SEAL.]

SIMEON S. COOK. [SEAL.]

Received and recorded Dec, 18, 1865.
Ex'd, A. T.

[*Exhibit A, C. W. T., Examiner.*]

This indenture, made this 24th day of March, 1866, by and between the Bailey Washing and Wringing Machine Company, a chartered corporation, duly organized under the laws of the State of Rhode Island, and located at Woonsocket, R. I., of the first part, and the Eureka Clothes Wringing Machine Company, a corporation organized under the laws of Massachusetts, manufacturing and doing business in Waltham, State of Massachusetts, party of the second part, witnesseth:

That the party of the first part is the legal owner of a reissued patent originally granted to John Allender, of New London, Conn.,
79 January 11, 1859, and reissued on the 18th day of April, A. D. 1865, for an "improved washing and wringing machine," said reissued letters-patent being numbered 1934.

The party of the second part has applied to the party of the first part for a license to manufacture clothes wringers under the reissued John Allender patent aforesaid, according to or substantially like a sample machine, which is marked Eureka, Oct. 1st, 1865, with ink, on the rolls, and deposited with the party of the first part.

And the party of the first part does hereby grant and convey unto the party of the second part a full and absolute right to use, in the manufacture of wringing machines for use or for sale, such parts of the invention secured in the said reissued John Allender Patent as are represented in said sample, and no others.

The rolls of such machines shall in no case be more than two inches in diameter, or more than twelve inches in length. The sample machine is what is called a tub machine; that is, it is to be attached to the side of a tub to be operated, and not to be attached to a bench. And it is understood that no license is granted under the said Allender patent to make, use, or sell any washing or wringing machines attached to a bench, and the parties of the second part agree that they will not make any washing or wringing machines attached to a bench.

And the party of the second part agree to submit to the party of the first part, on the fifth of every month, a statement, under oath, of the number of machines by it manufactured during the preceding month; and to pay at the same time to the party of the first part a tariff of fifty cents on each and every wringing machine by it constructed during the last-mentioned month.

And the party of the second part further agree to keep an accurate account of all wringing machines made by it, and that its books shall at all times be open for inspection by the party of the first part.

The party of the second part hereby covenant and agree with the

party of the first part that they will not, directly or indirectly, violate or infringe upon the said reissued patent originally granted to the said John Allender, as aforesaid, during the continuance of the same, or the continuance of any reissues, renewals, or extensions thereof, and that it will use all reasonable efforts, by giving information to said party of the first part, of any infringement thereof known to it.

80 If the said party of the second part shall willfully and knowingly violate any of the conditions of this agreement, or infringe upon said reissued patent, it shall have no further rights under the same, although it shall be bound thereby.

This agreement is binding upon the parties respectively, and upon their legal representatives during the remaining term of said patent, or any renewel or extension of the same; but it is not to be assigned without the written consent of the party of the first part.

In witness whereof the said party of the first part have caused its seal to be hereunto affixed and this instrument to be signed by S. A. Bailey, its general agent, thereto duly authorized; and the said party of the second part has affixed its seal and caused these presents to be signed by S. B. Rindge, its treasurer, thereunto duly authorized this day and year first hereinabove written.

Bailey Washing and Wringing Machine Co.,
S. A. BAILEY, *Gen. Agent.*
Eureka Clothes Wringing Machine Co.,
By S. B. RINDGE, *Treasurer.*

Executed and exchanged in presence of—
The date first altered to March 24, 1866; the word Waltham substituted for Boston, and one written line erased, before signing. Also S. B. Rindge substituted for L. L. Tower—
W. G. RUSSELL.

[*Exhibit B, C. W. T., Examiner.*]

This indenture, made this 24th day of March, 1866, by and between The Bailey Washing and Wringing Maching Company, a chartered corporation duly organized under the laws of the State of Rhode Island, and located at Woonsocket, R. I., of the first part, and The Eureka Clothes Wringing Machine Company, a corporation organized under the laws of Massachusetts, manufacturing and doing business in Waltham, State of Massachusetts, party of the second part, witnesseth:

That the party of the first part is the legal owner of a reissued patent originally granted to John Allender, of New London, Connecticut, January 11, 1859, and reissued on the 18th day of April, A. D. 1865,

81 for an "improved washing and wringing machine," said reissued letters-patent being numbered 1934.

The party of the second part has this day taken a license of the party of the first part under said reissued patent, which is referred to as if embodied in this agreement; and said license was granted on the conditions that the party of the second part should execute these presents.

Now, therefore, for the purpose of preventing a ruinous competition in the business, and to establish prices for the sale of wringing machines made by the party of the second part, so as to prevent any interference with the machines made by the parties of the first and second part, and by other licensees of the party of the first part, it is agreed as follows:

First. All the wringing machines made by the part of the second

part, with rubber rolls of the length of eight and one-half inches and of the diameter of one and five-eighths inches, or with rubber rolls under that size, in length or diameter, shall not be sold at less than six dollars fifty cents each, at retail.

Second. All the wringing machines made by the part of the second part, with rubber rolls of the length of more than eight and one-half inches, and up to ten inches in length, and of the diameter of one and five-eighths inches, shall not be sold at less than seven dollars fifty cents, at retail.

Third. All wringing machines made by the part of the second part, with rubber rolls of more than ten inches in length, and up to eleven inches, and of the diameter of one and three-fourths inches, shall not be sold at less than ten dollars cents at retail. It is understood that the above-named prices are for machines that have no cogs or any other mechanical device for compelling the rolls to turn together, except by friction of contact of the rolls, and the party of the second part agrees that it will not use cogs or any other mechanical device for compelling the rolls of machines to turn together except by friction of contact of the surface of the rolls, except it take a license of the party of the first part and pay an additional tariff of fifty cents on each and every machine by it made.

The changes of business may make it for the interests of all parties to change the price of wringing machines aforesaid, from time to
82 time, and in such cases it is agreed that David Lyman, of Middlefield, Connecticut, and Lyman A. Cook, of Woonsocket, Rhode Island, who are hereby appointed umpires for the purpose, shall hear the views of all parties, and decide whether any change shall be made in the prices; and their decision shall be endorsed on one part of this agreement and shall be binding and conclusive upon all parties in the same manner as if it had been embraced in and made part of this agreement; and the prices so fixed shall be the retail prices below which the machines of the part of the second part shall not be sold. If the said umpires shall at any time fail to agree upon the prices to be estab lished, they shall call in a third and disinterested person, satisfactory to both, and the decision of any two of such umpires shall be binding on the parties hereto. In case of the decease, inability, or refusal of either of the said umpires to act, then the Metropolitan Washing Machine Company, of Middletown, Connecticut, and the party of the first part, shall appoint another and disinterested person to act in his stead, which person shall be acceptable to the remaining umpire. And in case of the decease or permanent disability or refusal of both the said umpires to act, then the two last-named corporations shall call a meeting of all the licensees of the party of the first part, giving ten days' notice by mail to each; and the meeting so called shall appoint by majority vote two umpires, who shall have all the powers conferred herein on the said David Lyman and Lyman A. Cook.

It is agreed between the parties hereto, that the basis upon which said umpires shall act in fixing the retail prices at which the machines of the party of the second part shall be sold shall be as follows, to wit:

1st. They shall add to the actual cost, in labor and material, of the manufacture of the machines, the amount paid as tariffs under two certain reissued patents originally granted to John Young, said reissues dated January 6, 1863, the amount of tariff paid to the party of the first part under the license first herein referred to, and the government tax; they shall then fix upon a retail price which will allow to dealers a discount of thirty per cent. from the retail price of such machines,

and leave a profit of not less than ten per cent., nor greater than twenty-five per cent., upon the costs and tariffs aforesaid.

2d. If at any time during the continuance of this agreement,
83 the maximum discount to be allowed to dealers by the parties hereto shall be less than thirty per cent., then said umpires shall base their prices upon such reduced discount, instead of thirty per cent., as above.

3d. The party of the second part agree that it will not, directly or indirectly, sell, or permit to be sold, any machines at a price less than the prices fixed in this agreement, or hereafter established as herein provided for.

4th. The party of the second part agree not to discount to any agent or dealer who may purchase or sell its machines a sum exceeding thirty per cent. upon the retail prices herein fixed, or hereafter established, as herein provided for; and the party of the first part agree that they will not make and sell machines similar to those made by the party of the second part at prices less than those fixed for the party of the second part, and to make no greater discount thereon to dealers than the discount herein allowed, except that they may manufacture machines on contract for parties licensed and bound by this agreement.

5th. If any agent or dealer shall sell said machines at prices less than those fixed in this agreement, or hereafter established in the manner above provided, then the party of the first part, on receiving notice thereof, shall give notice to the party of the second part, and in such case the party of the second part shall not sell or supply machines, directly or indirectly, to such agent or dealer, and shall, by all means in his power, prevent such agent or dealer from buying or selling any more of said machines.

6th. If the party of the second part shall knowingly and willfully sell, or allow to be sold, any machines at prices less than those fixed in this agreement, or hereafter established as aforesaid, or if the party of the second part shall receive notice from the party of the first part that any agent or dealer is selling, at prices less than those fixed by this agreement, or hereafter established, and if the party of the second part, on the receipt of such notice, do not take the measures prescribed in article 5th of this agreement, then the party of the second part shall forfeit and pay to the party of the first part the sum of ten dollars for each and every machine by it sold, either directly or indirectly, at prices less than those above fixed, or hereafter established, as above mentioned.

This agreement is binding upon the parties respectively, and upon their legal representatives during the remaining term of said
84 patent, or any renewal or extension of the same; but is not to be assigned without the written consent of the party of the first part.

In witness whereof the said party of the first part have caused its seal to be hereunto affixed, and this instrument to be signed by S. A. Bailey, its general agent, thereto duly authorized; and the said party of the second part has affixed its seal and caused these presents to be signed by S. B. Rindge, treasurer, thereunto duly authorized, this day and year first hereinbefore written.

Bailey Washing and Wringing Machine Co.,
S. A. BAILEY, *General Agent*.

Eureka Clothes Wringing Machine Co.,
By S. B. RINDGE, *Treasurer*.

Executed and exchanged in presence of—
The date being first altered to March 24, 1866, and the word Waltham substituted for Boston; also, S. B. Rindge substituted for L. L. Tower—
W. G. RUSSELL.

[*Exhibit M, C. W. T., Examiner.*]

BOSTON *Dec* 23 '65

MR. S. A. BAILEY

Dr Sir

I am sorry that I won't be able to go to Woonsocket next Monday—circumstances are such that I find it impossible to do so.

In haste I remain
Truly Yours
T. J. ALEXANDER
Eureka C. W. M. Co.

[*Exhibit N, C. W. T., Examiner.*]

BOSTON *March 17th* '65

MR S A BAILEY

Dr Sir

I am sorry I was not able to see you to day. When next in town, I would like to see your Papers, or if you choose, please send them to me for perusal, and I will return the same.

Yrs L L TOWER

85 [*Exhibit O, C. W. T., Examiner.*]

WALTHAM MASS. *March* 27 '66.

S. S. COOK ESQ. TR.

Dr Sir

Please find enclosed check for $189.11 to bal. ac. to Mch 1, '66—send receipt by return mail.

We want you to make 200 rolls $10\frac{1}{8} \times 1\frac{7}{16} \times \frac{9}{16}$ as soon as convenient—before shipping these, send an Invoice of them to the Metropolitan Washing Mch Co. & oblige

Truly Yours
Eureka C. W. M. Co.
T. J. ALEXANDER *Agt.*

[*Exhibit K, C. W. T., Examiner.*]

WALTHAM *May* 17 '66.

Mr. S. S. COOK

Dr sir

You will please make 2 sample Rolls each of the following sizes—

$10\frac{1}{8} \times 1\frac{7}{16} \times \frac{5}{8}$ hole.
" $\times 1\frac{3}{8} \times \frac{5}{8}$ "
" $\times 1\frac{3}{8} \times \frac{9}{16}$ "

—we are going to wind our shafts with a thicker twine & want to experiment somewhat with the Rolls.

Enclosed please find check for $50.00 in full for the tariffs on those

100 machines made from the 100 setts Rolls you furnished us last month—please have the Bailey W. M. Co. send us receipt in full to date.

Please put in the above rolls with lot of 11 in ones ordered or if they have been sent forward by express.

I remain
Yours Truly, T. J. ALEXANDER *Agt.*

86 [*Exhibit P, C. W. T., Examiner.*]

WALTHAM Mass. *April* 18 '66.

Mr. S. S. COOK TR

Dr sir

Enclosed find check for $243\frac{00}{100}$ in full for Invoice March 2 '66—please receipt by return mail.

I have sent you to day a box containing 81 defective rolls which you will oblige by making right.

You promised to see S. A. Bailey about what we were talking? Please get him to drop us a line to the effect that the stock we purchased of you previous to March 24, '66 is released the same as under the Young Pat.

I remain,
Yours Truly, T. J. A.

[*Exhibit L, C. W. T., Examiner.*]

OFFICE OF BAILEY WASHING AND
WRINGING MACHINE COMPANY.
Woonsocket, R. I. May 19 1866.

EUREKA C. W. M. Co., WALTHAM MASS

Your favor of May is received, with check for Fifty Dollars, on account of tariff. Please accept our thanks.

Respectfully.
BAILEY WASHING AND WRINGING MACHINE CO.
J. P. WHIPPLE *Treasurer.*

[*Exhibit T, C. W. T., Examiner.*]

BOSTON, *March* 27 '66

A Directors' Meeting was held this day at the office of S. B. Rindge—Present D. Wallace, L. L. Tower, & S. B. Rindge—S. B. Rindge tendered his resignation as President of the Corporation, which was accepted—

L. L. Tower was unanimously elected President in place of Mr. Rindge resigned.

Voted to adjourn.
Attest T. J. ALEXANDER *Clerk*

87 [*Exhibit U, C. W. T., Examiner.*]

BOSTON *June* 13 '66

The Annual Meeting of the Co. was held this day at the office of Parker, Wilder & Co., 4 Winthrop Sq. pursuant to notice of which the following is a copy

BOSTON *June* 6 '66.

Esq ———Dr. Sir

The annual Meeting of the Eureka C. W. M. Co. will be held at the office of Mess. Parker, Wilder & Co. 4 Winthrop Sq. Boston on Wednesday the 13th Inst at 3 o'clock P. M.

Resp Yrs,

T. J. ALEXANDER, *Clerk.*

Present S. B. Rindge, L. K. Kidder, J. M. Cutter, John Rindge & T. J. Alexander. Voted To proceed to the election by ballot of Treasurer, Clerk & Directors—

S. B. Rindge was unanimously elected Treasurer, T. J. Alexander was unanimously elected Clerk, and S. B. Rindge, L. L. Tower, I. L. Kidder, D. Wallace & John Rindge were unanimously elected Directors—

Voted That the License Papers and Agreements with the Metropolitan Washing Machine Co. and Haley, Morse & Boyden dated March 24 '66, signed by S. B. Rindge Treasr. of this Co. be hereby ratified and approved.

Voted To adjourn.

Attest T. J. ALEXANDER, *Clerk.*

PROOFS FOR RESPONDENTS.

Deposition of T. J. Alexander.

FRIDAY, *Sept.* 27, 1867.

Int. 1. Please state your name, age, residence, and occupation.

Ans. My name is T. J. Alexander; age, twenty-eight years; reside in Waltham, Mass.; I am agent for the Eureka C. W. M. Company.

88 Int. 2. Do you know the description of all the wringing machines made by the Eureka Company since March 24, 1866?

Ans. I do.

Int. 3. (De bene esse.) Please examine machine marked Exhibit D, C. W. T., Examiner, and state whether or not, since the 24th day of said March, said Eureka Company have made any machines like that.

(Objected to because it is not shown that witness is an expert.)

Ans. I have examined it, and they have not.

Int. 4. Have you had the superintendence and charge of the manufacturing operations of that company; if yea, for how long a time?

Ans. I have, ever since the company went into existence as a corporation, which is nearly four years ago.

Cross-examination by M. E. Ingalls, esq.:

Cross-int. 1. How long have you been agent of the Eureka Company?

Ans. I was made agent by a vote of the directors something more than a year ago. I can't tell the date, but have been acting as agent ever since the company has started, I think.

Cross-int. 2. By what authority did you so act previous to the vote of the directors mentioned by you?

(Objected to.)

Ans. I was elected clerk of the corporation at their first meeting, and thereafter, at every annual meeting. I was the book-keeper and correspondent. I was empowered by their treasurer to take charge of the selling and manufacturing, which, I suppose, was virtually acting as their agent.

Cross-int. 3. Does the Eureka Company have a board of directors?

Ans. They have.

Cross-int. 4. Of how many does said board consist?

Ans. Five.

Cross-int. 5. Are you one of the directors of said company?

Ans. I am not.

Cross-int. 6. Have you been one since the organization of said company; and, if yea, when, and for how long?

Ans. I never have been elected a director.

Cross-int. 7. Who were directors of said company in March, 1866, if you know?

89 Ans. S. B. Rindge, John Rindge, L. L. Tower, S. J. Dennis, and David Wallace; I think the two latter were, though I may be mistaken.

Cross-int. 8. Will you state the time exactly when you were authorized by a vote of the directors to act as agent for said company?

Ans. After the examination of the books or records, I find it was Oct. 27, 1865.

Cross-int. 9. Will you please annex to your deposition a copy of the vote by which you were so appointed?

Ans. The vote was as follows: "S. J. Dennis made a motion that T. J. Alexander be appointed agent, with authority to purchase material for the manufacture of Eureka wringers, and full power for the sale of same, and other necessary business relating thereto. It was a unanimous vote." Oct. 27, 1865.

Cross-int. 10. When did you first see the sample machine marked Exhibit D, C. W. T., Examiner.

Ans. I think at a preliminary hearing before the court on a motion for an injunction.

Cross-int. 11. (De bene esse.) Have your company ever made any machines like Exhibit D, C. W. T., Examiner?

Ans. They have.

Cross-int. 12. When did your company cease making them?

Ans. I think it was three years since they gave up making machines of that pattern, though the may have made a very few since then.

Cross-int. 13. Will you produce a machine of the class or description that your company are now making?

Ans. I will; it is marked R, C. W. T., Examiner.

Cross-int. 14. How long have your company made this kind or description of machine?

Ans. I should say about three years.

Direct resumed:

Int. 5. You have stated, in answer to cross-interrogatory ten, that you think you first saw the machine marked Exhibit D, C. W. T., Examiner, at the hearing on the motion for a preliminary injunction; state whether or not you sent, or caused to be sent, that machine to the complainant company in March, 1866.

(Objected to.)

90 Ans. I have no recollection of ever having sent it, or caused it to be sent.

Int. 6. State whether or not, on or about the 24th of March, 1866, you sent a machine made by the Eureka Company to the Metropolitan Washing Machine Company.

(Objected to.)

Ans. I did.

Cross-examination resumed:

Cross-int. 15. By whose orders did you send the machine to the Metropolitan Washing Machine Company?

Ans. I think by order of the treasurer of the company, S. B. Rindge.

Cross-int. 16. Did you ever send any washing or wringing machines to the Bailey W. & W. M. Company?

Ans. I have sent a few there for repairs, sent to us by other parties to put in order.

Cross-int. 17. Did you ever send any machine made by the Eureka C. W. M. Company to the Bailey W. & W. M. Company?

Ans. I don't think I have.

Cross-int. 18. Did you ever know of one being sent to said company?

Ans. I never did.

Cross-int. 19. Did you, on or about March 24, 1866, hear anything about sending a sample machine from your company to the Bailey W. & W. M. Company?

Ans. I heard the matter spoken of, I think, at that time.

Cross-int. 20. By whom?

Ans. Selden A. Bailey.

Cross-int. 21. Any one else?

Ans. I think he was talking with S. B. Rindge in regard to it.

Cross-int. 22. What did you hear about it?

Ans. I can't recall the conversation. As near as I can recollect, Mr. Bailey requested Mr. Rindge to send him a clothes wringer.

Cross-int. 23. What did Mr. Rindge say?

Ans. I think he assented to his request.

Cross-int. 24. Where was this conversation?

Ans. At the office of Whiting & Russell, Court street, Boston.

91 Cross-int. 25. Who were present?

Ans. Mr. Tower, Mr. Lyman, Mr. Rindge, Mr. Bailey, and myself.

Cross-int. 26. Did you hear Mr. Tower say anything about sending a machine to Mr. Bailey, or to the Bailey W. & W. M. Company?

Ans. I think not.

T. J. ALEXANDER.

MONDAY, *January* 6, 1868.

Int. 1. You have already testified in this case, have you?

Ans. I have, sir.

Int. 2. Were you present on the 24th of March, 1866, at Messrs. Whiting & Russell's office, at an interview between Mr. Lyman and Mr. Rindge in relation to the agreement between the Metropolitan Washing Machine Company and the Eureka C. W. M. Company, which was executed on that day?

Ans. I was.

Int. 3. Did you hear Mr. Rindge say anything in the presence of Mr. Lyman and Mr. S. A. Bailey, in relation to his authority to sign any papers on behalf of said Eureka Company? If yea, state what you heard him say on that subject and to whom it was said.

(Objected to.)

Ans. Mr. Rindge stated to Mr. Lyman, in the presence of Mr. S. A. Bailey and others, that he had no authority from the Eureka Company to execute any such agreements in their behalf, but that he thought said company would sanction anything he did in the matter which was right. Mr. Lyman and others seemed to be perfectly satisfied with this, and the papers were signed and executed.

Int. 4. Were you present at the same place, on the following Monday, when Exhibits A and B were signed by Mr. Rindge, and did you hear him say anything, and what, on that occasion, to Mr. Bailey and others in relation to his authority to sign said papers, Exhibits A and B?

(Objected to.)

Ans. I was present. Mr. Rindge reiterated the statement he had made to Mr. Lyman on the Saturday previous, March 24, 1866, and clearly and distinctly said to Mr. Bailey, so that there could be no misunderstanding in relation thereto, that he had no authority to execute said papers—said Exhibits A and B, on behalf of the Eureka Company, but that he thought said agreements would be carried out
92 by them; with that Mr. Bailey seemed to be satisfied, and the licenses were executed.

Int. 5. Will you produce the blank forms for monthly returns, or such of them as you have in your possession or control, which were received from the Bailey W. & W. M. Company?

(Objected to.)

Ans. I will.

Cross-examination:

Cross-int. 1. Did you make any memorandum of what was said at either or both of the conversations referred to by you in your direct examination?

Ans. I did not.

Cross-int. 2. You have been present at the examination of all the witnesses whose testimony has been taken in this hearing, have you not?

Ans. I think I have.

Cross-int. 3. Has your company during the last two years made any wringing machines except those similar to Exhibit R?

Ans. We have not made any.

T. J. ALEXANDER.

Deposition of Samuel B. Rindge.

SATURDAY, *Oct.* 5, 1867.

Int. 1. Please state your name, age, residence, and occupation.

Ans. My name is Samuel B. Rindge; age, forty-six years; reside at Cambridge; occupation, merchant.

Int. 2. Were you, on the 24th day of March, 1866, treasurer of the Eureka Clothes Wringing Machine Company?

Ans. I believe I was, sir.

Int. 3. State whether or not you had any authority from that company to enter into any agreement with the Bailey Washing & Wringing Machine Company, either oral or written.

(Objected to.)

Ans. I had not.

93 Int. 4. Who was your predecessor as treasurer of the Eureka Company?

Ans. S. James Dennis.

Int. 5. State whether or not the treasurer of said Eureka Company was, on the 24th of March, 1866, or had been previous thereto, authorized or empowered by the said Eureka Company to enter into articles of agreement with the Metropolitan Washing Machine Company.

(Objected to.)

Ans. I believe he had been.

Int. 6. Did you state to Mr. David Lyman, or any one else in his presence, on the 24th day of March, or at any other time, that you had any authority to bind the Eureka Company by any agreement you might make with Bailey Washing and Wringing Machine Company?

Ans. I never did.

Int. 7. Did you ever give any directions to Mr. Alexander, or any one else, to send a sample machine to the Bailey Washing and Wringing Machine Company?

Ans. I believe not.

Int. 8. Did the Eureka Company, on the 24th day of March, 1866, have a corporate seal, and how long before?

Ans. I believe they did, commencing with the organization of the company.

Cross-examination:

Cross-int. 1. When were you appointed treasurer of said company?

Ans. Some time in the fall of 1865, or winter of 1865-'6.

Cross-int. 2. How were you appointed?

Ans. By vote of stockholders or vote of directors; I can't say which.

Cross-int. 3. What were your duties?

Ans. to sign certificates of stock, or anything that the stockholders or directors authorized me to do according to the by-laws of the corporation.

Cross-int. 4. Have you a copy of the by-laws of the Eureka Company, in force on the 24th of March, 1866?

Ans. I have not in my possession at this time.

94 Cross-int. 5. Will you procure a copy and annex to this your deposition?

Ans. I will endeavor to.

Cross-int. 6. Who were directors of said company on said 24th of March, 1866?

Ans. L. L. Tower, David Wallace, S. B. Rindge, and, I think, I. L. Kidder and John Rindge.

Cross-int. 7. How often did said directors hold meetings in 1866?

Ans. I will examine the directors' records and hand my answer to the examiner.

Cross-int. 8. What was Mr. T. J. Alexander's connection with said company?

Ans. He managed the works, purchased materials, received money, and paid the bills for supplies, and sold the machines; he was also clerk of the corporation.

Cross-int. 9. Did any of the directors have special duties to perform in connection with said company?

Ans. I would refer you to the by-laws. I recollect of no special duties not in the by-laws.

Cross-int. 10. Please examine Exhibit A, and state whether or not that is your signature to the same.

Ans. It is.

Cross-int. 11. Are there any other words upon the same in your handwriting, except the name S. B. Rindge; if yea, what?

Ans. There are. "Eureka Clothes Wringing Machine Company, by;" then follows my name and the word "Treasurer."

Cross-int. 12. Please examine Exhibit B, and state whether that is your signature to the same, and also what words, if any, in the same are in your handwriting.

Ans. It is my signature. "Eureka Clothes Wringing Machine Company, by;" then follows my name and the word "Treasurer."

Cross-int. 13. Where and when were said papers executed by you?

Ans. Exhibits A and B were signed in W. G. Russell's office, in Boston, on Monday, the 26th of March, 1866.

Cross-int. 14. Who were present?

Ans. Mr. Russell, Mr. Bailey, Mr. Alexander, and myself.

Cross-int. 15. Were they signed in pursuance of any previous agreement?

95 Ans. An arrangement had been made [based upon David Lyman's statements and representations] to enter into an agreement.

(Counsel for complainant objects to all the words inclosed in brackets in the foregoing answer, as irresponsive.)

Cross-int. 16. When was this arrangement which you speak about entered into, and with whom?

Ans. After the arrangement had been made with David Lyman, treasurer of the Metropolitan Washing Machine Company, on Saturday, 24th March, 1866, with Mr. Bailey.

Cross-int. 17. Who were present when this arrangement was made?

Ans. David Lyman, Mr. Bailey, Mr. Russell, Mr. Howe, Mr. Tower, Mr. Alexander, and myself.

Cross-int. 18. Were not duplicates of Exhibits A and B executed at the same time, and delivered to you?

Ans. I think they were executed, but not delivered to me. I think Mr. Alexander took them.

Cross-int. 19. Did you as treasurer of the Eureka Company enter into and execute articles of agreement with David Lyman, treasurer, on said 24th of March, 1866?

Ans. I stated to Messrs. Russell and Lyman that I had no authority to sign any agreement as treasurer of the Eureka C. W. M. Company with him, and repeated the statement, so that it might be plainly and distinctly understood; and that if they were satisfied with the signature without authority, further stating that I believed the company would sanction the signature, I would sign them. With this they were satisfied.

(Counsel for complainant objects to the whole answer to the last question.)

Cross-int. 20. Question repeated.

Ans. I signed certain agreements without authority as treasurer, so stating at the time.

Cross-int. 21. Will you produce a copy of said agreement and annex it to your deposition?

Ans. I will endeavor to.

Adjourned to Oct. 8.

96 Witness now makes further answer to cross-question No. 7. He says: The directors held one meeting on March 27, 1866, for the year.

Cross-int. 22. Will you annex to your deposition a copy of the record of said directors' meeting?

Ans. I will endeavor to.

Cross-int. 23. Did the stockholders of the Eureka Company hold any meeting in 1866 except their annual meeting required by the by-laws?

Ans. I do not think they did.

Cross-int. 24. Will you annex to your deposition a copy of the record of the annual meeting of the stockholders of said company?

Ans. I will endeavor to.

Cross-int. 25. What was the capital stock of the Eureka Company on the 24th March, 1866?

Ans. Four hundred shares at a par value of one hundred dollars each.

Cross-int. 26. How many of said shares stood in your name at that time?

Ans. I believe one hundred and ninety shares.

Cross-int. 27. In your answer to the nineteenth cross-question you say that you stated to Messrs. Lyman and Russell that you had no authority to sign any agreement with him as treasurer of the Eureka Company, and that you repeated it. Please state where and when you said this, and who were present.

Ans. It was in Mr. Russell's side office on this 24th day of March, between one and two o'clock p. m. of that day; there was present Mr. Russell, Mr. Lyman, Mr. J. D. Howe, Mr. L. L. Tower, Mr. T. J. Alexander, and Mr. Bailey.

Cross-int. 28. Was this statement which you say you made to them true?

Ans. I so considered, and believed so.

Cross-int. 29. Have the Eureka Company lived up to the terms and condition of the agreements entered into by you, as before stated, with the Metropolitan Washing Machine Company, and are they still fulfilling them?

Ans. I believe so.

97 Cross-int. 30. Did you have any conversation with Mr. Bailey as to a license for the Eureka Company, under the Allender patent, at the time that this arrangement of March 24, 1866, was entered into, as testified by you?

Ans. Yes.

Cross-int. 31. Who were present at that conversation?

Ans. The same persons I have mentioned in answer to cross-interrogatory twenty-seven. It was on the same occasion.

Cross-int. 32. Who was Mr. Howe counsel for?

Ans. He was employed by the Eureka Company in the case of the Metropolitan Washing Machine Company against the Eureka Company, and nothing else.

Cross-int. 33. Did not the Eureka Company pay the Metropolitan Company a certain sum of money in settlement of said suit?

Ans. We paid the Metropolitan Company nothing, but did pay Mr. Russell five hundred dollars, which was to be divided between counsel on both sides.

Cross-int. 34. In this conversation with Mr. Bailey, mentioned in your answer to the thirtieth cross-interrogatory, was anything said about sending a sample machine to the Bailey W. and W. M. Company?

Ans. I do not recollect of anything.

Cross-int. 35. Was anything said at that conversation about Mr. Bailey's releasing the Eureka Company for what machines they had manufactured and had on hand?

Ans. [After the arrangement had been agreed upon between Mr. Lyman for the Metropolitan Washing Machine Company, he brought up the claim of Mr. Bailey for the Allender patent. I stated to Mr. Lyman and to Mr. Bailey that we did not use the Allender patent in our machine. Mr. Lyman stated that he had had a suit with the Bailey Company in relation to the Allender patent, and stated that he or his agents

had visited England, Scotland, and part of Europe to get information to defeat the Bailey Company suit against him. He had visited the old thread mills at Paisley, in Scotland, expecting to find that they had used rollers for the expression of sizing, similar to what Allender claimed, and had been at great expense to obtain information in relation to the Allender claim; and that he had felt satisfied that the claim was good for nothing against him. Still, after further investigation, he had thought best to settle the suit with the Bailey Company, and
98 now, after his great labors, he would advise us to take a license from the Bailey Company to use the Allender patent. I stated to them that we did not use the Allender patent in our machine; and his reply was, "I advise and want you to take the right from the Bailey Company under the Allender patent, for Bailey will sue you if you do not, and I want you to take it, so you can go on and manufacture a great many machines, so that I shall receive a large amount under the agreement to use the John Young patent. It will make a great deal of difference to me if you do not and Bailey should stop you." After further discussion he said, "I recommend and advise you to take the right to use the Allender patent from Bailey, and it is for your interest to do so, for I found I could not get away from it." I then consulted with Mr. Tower, and Mr. Tower's decision was, that the Eureka Company was not infringing the Allender patent. I stated to him, if we were not using it, or infringing it, there could be no harm in taking the right to use the Allender patent, and] I understood from Mr. Bailey that, in case we would execute the license papers, that on any machines we had manufactured, or had on hand, that infringed on the Allender patent, he would give up all claim upon them; and that completed the arrangement. The license papers not being there, it was agreed to meet at Mr. Russell's office the Monday following, and execute them.

(Counsel for plaintiff objects to all the foregoing answer enclosed in brackets.)

Adjourned to Friday, October 10, at 2 p. m.

(Witness here produces a copy of the record called for in answer to cross-interrogatory twenty-four; it is marked U, C.W.T., Examiner, and also, copy of record of directors' meeting, March 27, 1866, marked T, C. W. T., Examiner.)

Cross int. 36. How many shares of stock in the Eureka Company did Mr. L. L. Tower own upon the 24th of March, 1866?

Ans. I do not know.

Cross-int. 37. How many shares stood in his name upon the books of the Eureka Company?

Ans. Fifty shares.

Cross-int. 38. How many shares of stock in the Eureka Company stood in the name of T. J. Alexander upon the books of said company on said 24th of March, 1866?

99 Ans. Twenty shares.

Cross-int. 39. Who paid the $500 to Mr. Russell, in settlement of the suit of the Metropolitan Washing Machine Company against the Eureka Company?

Ans. I paid it.

Cross-int. 40. Did you read over Exhibit A before you signed it?

Ans. I cannot say positive.

Cross-int. 41. Is it your custom to sign papers without reading them?

Ans. No, sir.

Cross-int. 42. Is there any reason that you now think of, which leads you to think that you did not read Exhibit A?

Ans. The Bailey papers had been referred to L. L. Tower as to their legality, and so forth, and he may have stated to me their contents.

Cross-int. 43. You either read the same, or learned its contents before signing, did you not?

Ans. I believe so.

Cross-int. 44. Why was the name L. L. Tower in Exhibit A, C. W. T., Examiner, erased before signing, and your own substituted therefor, if you know?

Ans. I suppose because I was treasurer of the company.

Cross-int. 45. Which party did you understand, under Exhibit A, C. W. T., Examiner, was to furnish the sample machine?

Ans. At the time I had no understanding about it; I recollect none.

Cross-int. 46. When did you pay the money mentioned by you in answer to cross-interrogatory thirty-nine?

Ans. I think on the 26th of March.

Cross-int. 47. Did you pay this money as treasurer of the Eureka Company, or on your private account?

Ans. As treasurer.

Cross-int. 48. Did you have any authority to pay it?

Ans. The former treasurer was authorized to sign the agreements with the Metropolitan Washing Machine Company, and, as his successor, the papers of the Metropolitan W. M. Company were signed and the money paid.

Cross-int. 49. Then you considered that you had authority to sign the agreements with the Metropolitan W. M. Company, did you not?

100 Ans. I did not. [I stated plainly and decidedly that I had no authority to sign the agreement, and repeated the statement, so that there should be no misunderstanding; but that I believed the company would approve of my signing, and, if they were willing to take my signature on those conditions, I would sign.]

(Counsel for plaintiff objects to all the above answer enclosed in brackets.)

Cross-int. 50. Did you have any more authority to pay the five hundred dollars than you did to sign the agreements?

Ans. I considered I did; otherwise, I should not have made the objection I did to signing the papers.

Cross-int. 51. What greater authority did you have?

Ans. I refer you to the by-laws.

Cross-int. 52. Please examine the by-laws, and show the examiner what clause in them gave you such authority.

Ans. Article fourth of the by-laws.

Cross-int. 53. Does article fourth give you authority to pay out money to carry out an invalid or illegal contract?

Ans. In a legal sense of the word, I shoud say no.

Cross-int. 54. Does article fourth give you authority to pay out money to settle litigation?

Ans. I believe it does.

Cross-int. 55. Please give the words which gives you such authority.

Ans. He shall sign checks and pay out money, taking proper vouchers therefor, and give or negotiate such notes or bills of exchange for such amounts and at such times as the business of the company may require.

Cross-int. 56. What was this five hundred dollars paid for?

Ans. To settle the suit and claim of the Metropolitan Company against the Eureka C. W. M. Company, and for all legal services and costs of suit.

Cross-int. 57. Did you not consider it rather risky to pay out money for such a purpose and on such authority?

Ans. I did not.

Cross-int. 58. Who has paid the tariff to the Metropolitan Washing Machine Company under that agreement?

101 Ans. The Eureka Company, through T. J. Alexander.

Cross-int. 59. When did you first notify the Bailey Washing and Wringing Company that the Eureka Company refused to be bound by Exhibits A and B, if at all?

Ans. I think in the summer of 1866. I stated to Mr. Bailey that we were not using the Allender patent, and therefore there was nothing doing.

Cross-int. 60. Did you ever tell him that the Eureka Company refused to be bound by Exhibits A and B?

Ans. I do not think I ever did.

Cross-int. 61. Did the Eureka Company ever repudiate your action in executing Exhibits A and B?

Ans. They never did, as I understood it.

Adjourned to Thursday, Oct. 17.

Witness adds to his last answer:

That is, as I understand the agreement, [and as the company understood it; but as Mr. Bailey presented his claim soon after signing of the agreement, they did repudiate it as he presented it.]

(Counsel for complainant objects to all the above answer enclosed in brackets.)

Witness produces exhibit called for in cross-interrogatory twenty-one. It is marked Exhibit V, C. W. T., Examiner.

Cross-int. 62. In your answer to cross-interrogatory sixteen you say you entered into an arrangement based upon David Lyman's statements and representations. Please give those statements and representations.

Ans. After the arrangement had been completed with Mr. Lyman for the Metropolitan W. M. Company, Mr. Lyman remarked "Now, then, Mr. Bailey wants to make an arrangement with you for the Allender patent," Mr. Bailey being present. I stated to Mr. Bailey that we were not using the Allender patent. Mr. Lyman remarked that Mr. Bailey had sued him or the company for using the Allender patent, and that he had contested it; and that he, Lyman, or his agent, had been to England, Scotland, and Wales, and I think he said to Europe, to hunt up evidence to defeat the Allender patent; that he or his agent, I think he stated he, had been to Paisley, in Scotland, and visited the old thread mills where they had used rolls for expressing the sizing from the thread; and that

102 he had examined the patent records to see if he could not find something that would set aside the Allender patent; but after a good deal of labor, he had settled the suit with the Bailey Company, and he should recommend us to make an arrangement with Bailey; "for if Bailey commences a suit against you, and stops you, I shall not make any money out of you." There was further talk with Bailey and Lyman, on both sides.

Cross-int. 63. (De bene esse.) When did the Eureka Company repudiate your action in executing Exhibits A and B, as stated by you in your amendment to your answer to cross-interrogatory sixty-one?

Ans. I should think within a few months after the signing, [by their refusing to pay the claims as Bailey presented it.]

(Counsel for complainant objects to all the above answer enclosed in brackets.)

Adjourned to Friday, at 2 p. m.

Friday, 2 p. m., examination resumed.

Cross-int. 64. (De bene esse.) Will you produce the vote by which the Eureka Company repudiated your action?

Ans. I am not aware that they passed any vote repudiating it.

Cross-int. 65. (De bene esse.) How then did they repudiate your action, if at all?

Ans. As I understand the agreement, they have not repudiated it; but the claim that Mr. Bailey makes upon the Eureka Company they refuse to pay as he claims, under the Allender patent.

Cross-int. 66. (De bene esse.) When did they first refuse to pay Mr. Bailey's claim?

Ans. As I understand, within a few months after the signature to the agreement.

Cross-int. 67. (De bene esse.) In what month was this?

Ans. I should judge in April, May, or June.

Cross-int. 68. (De bene esse.) Can't you say which?

Ans. No. sir.

Cross-int. 69. (De bene esse.) To whom did Mr. Bailey present his claim?

Ans. To Mr. Alexander or Mr. Tower or both, as I have understood, and, later than the time specified, to me.

Cross-int. 70. (De bene esse.) When did he present his claim to you?

Ans. In the summer of 1866.

103 Cross-int. 71. (De bene esse.) Did you refuse to pay it?

Ans. I stated to him that I was willing to leave the question to any proper disinterested parties, and if they decided we were using the Allender patent we would pay his claim; but I believed we were not using the Allender patent.

(Counsel for plaintiff objects to the foregoing answer.)

Cross-int. 72. (De bene esse.) Question repeated.

Ans. If he asked me to pay as he claimed, I did.

Cross-int. 73. (De bene esse.) Did you object to pay on the ground that Exhibits A and B were not properly signed and executed?

Ans. I made no such objection.

Cross-int. 74. (De bene esse.) Do I understand from your testimony that the Eureka Company never have refused to pay any tariff under Exhibits A and B, on the ground that they were not properly signed and executed?

Ans. I do not know that such a question has been brought up.

Cross-int. 75. (De bene esse.) Question repeated.

Ans. Before the present suit was brought, that question was never brought up at any meeting of the directors, that I remember.

Cross-int. 76. (De bene esse.) Do you remember of its being brought up at any stockholders' meeting previous to the commencement of this suit?

Ans. I do not remember.

Cross-int. 77. (De bene esse.) Previous to amending your answer to cross-interrogatory sixty-one, did you have any conversation with any person as to said interrogatory, and your answer to the same?

Ans. After we had conversation here, and then leaving the office, and

before getting out of the building, I stated that I wished to add to that answer what I did further answer, and I understood I had the right to add it. The amendment was of my own suggestion, and not suggested to me by any one else.

Re-direct resumed:

Int. 9. You have stated, in answer to cross-interrogatory forty-eight, that "the former treasurer was authorized to sign the agreements
104 with the Metropolitan W. M. Company," etc. How was the former treasurer authorized?

(Objected to.)

Ans. By vote of the directors, June 25, 1864.

Int. 10. Please annex to your deposition a copy of said vote.

(Objected to.)

Ans. I will; it is marked Exhibit 2, C. W. T., Examiner.

Int. 11. Was Mr. J. D. Howe consulted by the Eureka Company on the 24th day of March, 1866, or at any other time, in reference to the claim or demand of the Bailey Company under the Allender patent?

Ans. Not to my knowledge.

(Witness here wishes to explain his answer to cross-interrogatories thirty-five and sixty-two, and says that Mr. Lyman may not have stated that the Bailey suit against him was on the Allender patent, but that it was brought in and formed part of the settlement of the suit.

Witness further adds, complainants' counsel objecting, that, "before signing the agreements with the Bailey Company, on Monday, March 26, 1866, I stated to Mr. Bailey and to Mr. Russell, in presence of Mr. Alexander, that I had no authority, as treasurer, to sign the agreements; but that if they were willing to take my signature without authority from the company, and believing that the company would approve it, I would sign it.")

SAMUEL B. RINDGE.

Deposition of C. W. Baldwin.

FRIDAY, *Dec.* 27, 1867.

Int. 1. Please state your name, age, residence, and occupation.

Ans. My name is Cyrus W. Baldwin; age, forty-seven years; reside in Dorchester; I am mechanical engineer at present; I have more or less to do with soliciting patents in connection with Mr. Frederic Curtis, for the last sixteen or eighteen months. I have been a mechanical engineer for the last six years.

Int. 2. Please state whether or not you have testified as an expert in patent causes.

Ans. I have.

105 Int. 3. Please state whether or not you are familiar with wringing machines, and the principles of their construction.

Ans. I am.

Int. 4. Please examine Exhibit D, and also Exhibit R, and state whether or not the machine Exhibit R is substantially like the machine Exhibit D, called the sample machine.

(Objected to.)

Ans. I have examined them, and I should say they are not substanstantially alike.

Adjourned to Saturday, at 11 o'clock.

Cross-examination:

Cross-int. 1. State in what patent suits you have testified as an expert.

Ans. Blanchard vs. Batchelder, Griffin vs. Knox, Wheeler & Wilson vs. Lothrop Sewing Machine Company, and in other cases.

Cross-int. 2. To what did these suits relate?

Ans. The Blanchard case was in reference to his lathe for turning irregular surfaces. In the Griffin case it was in regard to a machine for cutting soles for shoes. I have testified in twenty-five cases and more, but it is pretty difficult for me to remember all the names.

Cross-int. 3. State what parts of machine Exhibit R are dissimilar from machine Exhibit D.

Ans. As far as the rollers are concerned, they are the same, excepting in length and size. The springs are about the same, varying in length about three-quarters of an inch from the centre of roll to the bow, the machine marked D being the longer. The machine marked R the spring is broader and shorter than the machine marked D. I see a slight difference in the hub of the prongs or forks; the one marked R having the outer part of the hub projecting over the edge of the spring, having a slot through the part of the hub or sleeve, fitting or nearly fitting the edge of the spring for the purpose of keeping the forks in the proper position in relation to the spring; other ways in the forks of the machine marked R are so arranged that they may be changed to various angles, thus enabling the operator to use the machine marked R on various sized tubs in circles, or on square tubs or vessels. In machine marked D the forks are stationary, and formed for the purpose of fitting
106 tubs and circles not capable of being changed in their angle, and cannot be used on square tubs or vessels.

Cross-int. 4. With the exception of the construction of the forks and their manner of operation, are not the two machines substantially alike?

Ans. They are.

Cross-Int. 5. Are not the two machines in their rolls, and in the manner in which those rolls are compressed together, substantially alike?

Ans. If that relates only to the rolls, as they appear externally, they are substantially the same.

Cross-int. 6. Is not the manner of compressing the rolls together the same in both machines?

Ans. It is.

Cross-int. 7. As far as performing the function of squeezing clothes, are not both machines substantially alike?

Ans. They are.

Direct resumed:

Int. 5. Please examine letters-patent marked Exhibit C, being the third reissued Allender patent, and state whether the machine marked Exhibit R is substantially the same or different in its construction or mode of operation from the machine described in the descriptive part of the specification of said patent or the drawings annexed thereto.

(Objected to.)

Ans. In its construction it is entirely different. In its mode of operation it is similar. They are both used in a similar way by turning the crook, the clothes passing through between the rollers the same as the machine marked R.

Int. 6. Whether or not they resemble each other in any other respect than that in each by turning the crook the clothes are made to pass between compressing rollers?

(Objected to.)

Ans. I should say not.

Int. 7. Whether or not Exhibit R, in its mechanical construction, is

the same with or different in principal from the machine described and shown in the descriptive part and drawings of said Allender patent?

(Objected to.)

Ans. They are different.

107 Cross-examination resumed, de bene esse:

Cross-int. 8. (De bene esse.) State wherein Exhibit R differs in its construction from the machine described in said Allender patent.

Ans. The construction of machine Exhibit R has two rolls of rubber tubing forced or drawn on to separate spindles of metal, the lower spindle of lower roll being longer than that of the upper roll, and so constructed as to admit of a crank placed upon one end by means of a square formed on the end of a shaft to fit the socket or the crank, and held on by a nut. The upper roll has a spindle sufficiently long to admit of a suitable bearing at each end. The rolls, both upper and lower, are placed in suitable curves or bearings, formed on each end of a spring, commonly called C springs, this spring being suitably made and properly tempered, so that when the rolls are not in their places that the two ends will approach each other to within a distance of an inch or an inch and a quarter, or thereabouts, for the purpose of giving sufficient pressure to the rolls to squeeze the cloth sufficiently to express the water from it. In the front of the rolls is a quarter-circle bar of wood passing from spring to spring with parts projecting outside of the flanges on the bar to the extreme length outside of the springs, the flanges on the bar being used for the purpose of guiding clothing or such articles as may be passed through the machine for the purpose of expressing the water. In the ends of the projections, outside of the bar, are slots of such size or capacity as to allow the springs to pass through the same, two rivets, one at each end, passing through the projections of the bar and through the springs and riveted together, clamping the spring between the two parts of the projection of the bar. I am not able to state whether this screw or bolt which holds on the forks or prongs passes through the wood of the bar forming one bolt, or whether they are eye-bolts passing into the end of the bar and fastened or holden by the rivet before mentioned, passing through the projection of the bar and spring. These screws or bolts last mentioned hold the prongs or forks securely to the end of the bar. These forks and prongs are used for the purpose of holding the machine to the tub or vessel on which it may be used. The forks or prongs are so constructed as to change in their angle from a right angle to the rolls from about thirty degrees, right and left.

108 In the lower end of the outer prong is an adjusting screw to hold it to a tub or vessel where the side is not over an inch and five-eighths in thickness. The arrangement of these prongs or forks for changing the angle is such as is commonly used in hinges or butts. The springs are so constructed, as before mentioned, that the ends for the bearings of the rolls approach each other at the distance of an inch or inch and a quarter, or thereabouts, so that when they are pressed open sufficiently to admit of two rolls of about the diameter of an inch and five-eighths each, to cause a pressure sufficient for squeezing cloth of a few thicknesses or single. When a larger or thicker quantity is required to pass through the rolls, the springs open at their bearing ends, allowing the rolls to recede from each other sufficiently to allow the extra thickness to pass through, increasing the pressure gradually as they recede or open, thus expressing the water from a larger quantity equally well as smaller.

The Allender machine is constructed, as shown in these drawings,

with a base of wood with four legs of wood; two standards or housings for the purpose of admitting the boxes or bearings for the two rolls termed upper and lower, the two standards having at their top a cross-bar or cap. The upper roll is constructed of a wood or metal spindle turned smaller in the centre than at the ends; this spindle being longer than the lower to enable the operator to place upon it a crank in the usual way for the purpose of operating the machine. Around this spindle is a spring of flat, thin metal in a spiral form, having a covering suitable for forming a roll with perfect surface or nearly so, having a flexible and yielding quality. On the ends of the same are gears fastened firmly to the spindle for the purpose of keeping the two rolls, the upper and lower, in the same relative position to each other. These same gears are used for the purpose of holding the outside covering or surface of the roller or rolls in its proper position. The two rolls, the upper and lower, are placed in the standards or housings, each end of each roll having a box or bearing so constructed as to allow a free movement of the rolls and boxes upward and downward; the lower roll only being movable while in operation of passing through such articles as are being squeezed or having the water expressed from them; the upper roll remaining permanent in its position, excepting when adjusted by the screws passing through the caps of the standards or housings by
109 the operator, thus enabling the operator to adjust the pressure, giving more or less to the same thickness of material passing between the rolls. These standards or housings are supported in the base by a tenon passing through the base, having a key passing through the tenon, holding it firm in their places at the bottom. They are also strengthened by a piece of wood about an inch or an inch and a quarter thick, firmly fastened to their sides, passing up nearly to the centre of the top or upper roll, having a recess cut from the top downward a little below the centre between the two rolls. At the bottom of this recess are two small projections, one on each side of the machine, for the clothing or articles to be squeezed while passing in through the rolls and out on the opposite side. The variation of the lower roll and the means used for allowing it to recede from the upper roll is a spiral spring placed directly under the box at each end of the roll, forming a bearing for the roll, having its base at the lower end of the slot of the standard or housing; this spiral spring forcing the lower roll up against the upper roll to the full extent of its power according to the way the operator may adjust it by the screws at the top placed there for that purpose.

Adjourned to Monday, December 30.

MONDAY, *December* 30.

Cross-int. 9. Do you or do you not find, in the machine marked D, rollers covered with vulcanized rubber in combination with springs for adjusting said rollers to whatever cloth or clothes may be passed between them?

Ans. I do find them self-adjusting.

Cross-int. 10. What do you mean by self-adjusting?

Ans. Adjusting themselves to the thickness of the cloth or clothing which passes through them.

Cross-int. 11. Do you or do you not find, in the machine marked R, rollers covered with vulcanized rubber in combination with springs for adjusting said rollers to whatever cloth or clothes may be passed between them?

Ans. I find this machine, in principle, precisely the same as the ma-

chine marked D, with the exception of the forks, as I have heretofore stated.

110 Direct-resumed:

Int. 8. You have stated in answer to cross-interrogatory nine and eleven that you find in Exhibits D and R rollers covered with vulcanized rubber in combination with springs, etc.; please examine the roller or rollers described in the said Allender patent and shown in the drawings, and say whether the rollers of Exhibits D and R are substantially the same or different in principle from the said roller or rollers in the Allender patent.

(Objected to.)

Ans. They are different in principle of construction.

Int. 9. Are the springs shown in the Allender patent the same in principle, or different from the springs shown in Exhibits D and R?

(Objected to.)

Ans. They are different.

Cross-resumed, de bene esse:

Cross-int. 12. Do you not find, in the Allender patent, the rolls covered with vulcanized rubber?

Ans. I find it stated in the description that they may be covered with vulcanized rubber; he also mentions other materials.

Cross-int. 13. Are not the rolls in Exhibits D and R covered with vulcanized rubber?

Ans. They are.

Cross-int. 14. State the difference between the spring shown in the Allender patent and those in Exhibits D and R.

Ans. The spring used in the Allender patent is known as the spiral spring. In the Exhibits D and R are springs made of flat spring steel, known as C spring. I can give you the difference in their action, if you desire it.

Cross int. 15. Please do so.

Ans. The springs used on the Allender machine are placed under the boxes or bearings of the lower roll or roller. When the cloth or clothing passes through between the rolls, the upper and lower, the springs are compressed, their ends toward each other; such spring having for its limits equal to bringing together of each coil of wire or metal, thus coming to a solid basis or stop. The springs in machines marked D and R are C springs, made as heretofore described, the operation of

111 which, when the clothes or cloth pass through between the two rolls, upper and lower, the two ends are pressed apart from each other. The limits of the springs are continuous to the bending or breaking, depending upon the temper.

Cross-int. 16. Do or do not the springs described in the Allender patent, and those in Exhibits D and R, perform the same duty, namely, that of compressing the rolls to the cloth or clothes passed through them?

Ans. They do.

Direct resumed:

Int. 10. Do the springs described in the Allender patent perform all the functions of the springs shown in Exhibits D and R, without the aid or co-operation of the set screws shown in the Allender patent?

(Objected to.)

Ans. They do not.

with a base of wood with four legs of wood; two standards or housings for the purpose of admitting the boxes or bearings for the two rolls termed upper and lower, the two standards having at their top a cross-bar or cap. The upper roll is constructed of a wood or metal spindle turned smaller in the centre than at the ends; this spindle being longer than the lower to enable the operator to place upon it a crank in the usual way for the purpose of operating the machine. Around this spindle is a spring of flat, thin metal in a spiral form, having a covering suitable for forming a roll with perfect surface or nearly so, having a flexible and yielding quality. On the ends of the same are gears fastened firmly to the spindle for the purpose of keeping the two rolls, the upper and lower, in the same relative position to each other. These same gears are used for the purpose of holding the outside covering or surface of the roller or rolls in its proper position. The two rolls, the upper and lower, are placed in the standards or housings, each end of each roll having a box or bearing so constructed as to allow a free movement of the rolls and boxes upward and downward; the lower roll only being movable while in operation of passing through such articles as are being squeezed or having the water expressed from them; the upper roll remaining permanent in its position, excepting when adjusted by the screws passing through the caps of the standards or housings by
109 the operator, thus enabling the operator to adjust the pressure, giving more or less to the same thickness of material passing between the rolls. These standards or housings are supported in the base by a tenon passing through the base, having a key passing through the tenon, holding it firm in their places at the bottom. They are also strengthened by a piece of wood about an inch or an inch and a quarter thick, firmly fastened to their sides, passing up nearly to the centre of the top or upper roll, having a recess cut from the top downward a little below the centre between the two rolls. At the bottom of this recess are two small projections, one on each side of the machine, for the clothing or articles to be squeezed while passing in through the rolls and out on the opposite side. The variation of the lower roll and the means used for allowing it to recede from the upper roll is a spiral spring placed directly under the box at each end of the roll, forming a bearing for the roll, having its base at the lower end of the slot of the standard or housing; this spiral spring forcing the lower roll up against the upper roll to the full extent of its power according to the way the operator may adjust it by the screws at the top placed there for that purpose.

Adjourned to Monday, December 30.

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Ans. I do find them self-adjusting.

Cross-int. 10. What do you mean by self-adjusting?

Ans. Adjusting themselves to the thickness of the cloth or clothing which passes through them.

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Ans. I find this machine, in principle, precisely the same as the ma-

chine marked D, with the exception of the forks, as I have heretofore stated.

110 Direct-resumed:

Int. 8. You have stated in answer to cross-interrogatory nine and eleven that you find in Exhibits D and R rollers covered with vulcanized rubber in combination with springs, etc.; please examine the roller or rollers described in the said Allender patent and shown in the drawings, and say whether the rollers of Exhibits D and R are substantially the same or different in principle from the said roller or rollers in the Allender patent.

(Objected to.)

Ans. They are different in principle of construction.

Int. 9. Are the springs shown in the Allender patent the same in principle, or different from the springs shown in Exhibits D and R?

(Objected to.)

Ans. They are different.

Cross-resumed, de bene esse:

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Ans. I find it stated in the description that they may be covered with vulcanized rubber; he also mentions other materials.

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Cross int. 15. Please do so.

Ans. The springs used on the Allender machine are placed under the boxes or bearings of the lower roll or roller. When the cloth or clothing passes through between the rolls, the upper and lower, the springs are compressed, their ends toward each other; such spring having for its limits equal to bringing together of each coil of wire or metal, thus coming to a solid basis or stop. The springs in machines marked D and R are C springs, made as heretofore described, the operation of

111 which, when the clothes or cloth pass through between the two rolls, upper and lower, the two ends are pressed apart from each other. The limits of the springs are continuous to the bending or breaking, depending upon the temper.

Cross-int. 16. Do or do not the springs described in the Allender patent, and those in Exhibits D and R, perform the same duty, namely, that of compressing the rolls to the cloth or clothes passed through them?

Ans. They do.

Direct resumed:

Int. 10. Do the springs described in the Allender patent perform all the functions of the springs shown in Exhibits D and R, without the aid or co-operation of the set screws shown in the Allender patent?

(Objected to.)

Ans. They do not.

Cross-resumed de bene esse:

Cross-int. 17. Why do they not?

Ans. The difficulty in the spring of the Allender machine, called the spiral spring, is, that it has not sufficient limit, I should say; the difficulty being in forming a spring with sufficient opening, and not be liable to break, and give the required strength.

CYRUS W. BALDWIN.

Deposition of L. L. Tower.

MONDAY, *November* 18, 1867.

Int. 1. Please state your name, age, residence, and occupation.

Ans. My name is L. L. Tower; age, forty years; reside in Cambridgeport; I am a stationer.

Int. 2. Were you present when Exhibits A and B were signed?

Ans. Yes, sir.

Int. 3. Did you hear Mr. Rindge say on that occasion anything as to his authority to sign those papers on behalf of the Eureka Company?

(Objected to.)

112 Ans. I did.

Int. 4. Whether or not he stated to any one then present that he was so authorized?

(Objected to.)

Ans. He did not.

Int. 5. Whether or not he stated that he was not authorized to sign those papers on behalf of the Eureka Company, or anything to that effect?

(Objected to.)

Ans. He did so state something to that effect.

Int. 6. Were you a director of the Eureka Company at that time?

Ans. Yes, sir.

Ins. 7. Did you make any objection to the signing of those papers?

(Objected to.)

Ans. I did make objections.

Int. 8. Did you afterwards assent?

(Objected to.)

Ans. I assented to the signing of them; [so far as we used anything that was in his patent, we were willing to pay royalty, so far as I was concerned in the company. I designed it that so far as we did use, if we did use anything that went into his patent—that was found in his patent—so far as I was concerned, I was willing to pay royalty.]

(The last sentence was added by witness after conversation between council in his presence.

Counsel for plaintiff objects to all the above answer enclosed in brackets.)

Int. 9. Please explain what you mean by the words "I designed it," in your last answer.

(Objected to.)

Ans. To apply to the points in his patent which he claimed we were infringing.

Cross-examination:

Cross-Int. 1. Are you now a director and stockholder in the Eureka Company?

Ans. Yes, sir, our firm is.

113 Re-direct resumed:

Int. 10. Did you ever send a sample machine to the Bailey W. and W. M. Company?

(Objected to.)

Ans. No, sir.

Int. 11. Whether Mr. David Lyman was present at the time the conversation took place which you refer to in your previous answers?

Ans. He was.

L. L. TOWER.

Deposition of Francis C. Treadwell, jr.

TUESDAY, *February* 4, 1868.

(Counsel for plaintiff objects to the examination of Francis C. Treadwell, jr., at this stage of the case.)

Int. 1. Please state your name, residence, and occupation.

Ans. My name is Francis C. Treadwell, jr.; age, forty-four years; reside in the city of New York; my occupation is consulting engineer and solicitor of patents; a large portion of my time is, however, occupied in performing the duties of mechanical expert in patent causes in the United States courts.

Int. 2. Please examine Exhibits D and R, and state whether, in your opinion, they are substantially alike.

Ans. I have examined the two apparatuses marked Exhibits D and R, and consider them, as a whole, substantially different from each other; one of them, Exhibit R, having capacities not possessed by the other. Each of the two apparatuses may be divided into two parts; the first part being the rollers and their combining mechanism; the second part being the mechanism by which they are attached to a place of support in order that the apparatus may be made available for the purpose of its construction. And as these machines are constructed they are not of practical use without the employment of both of the parts. It is necessary that the machines should be supported and held in position while the operator is using them. In Exhibit D, the means

114 for holding consists of a pair of clamps, provided with clamping screws, and rigidly attached to the machine, in such position that the machine or apparatus can be attached to a circular tub of the requisite degree of curvature, and some difference of size of tub or variation of curvature may be accommodated by reason of the width of the clamps; but the apparatus with its clamps is practically limited in its use to circular tubs, such as are commonly used in washing clothes. The apparatus Exhibit R practically differs from Exhibit D in having clamping attachments that are adapted to square tubs or to being clamped to any straight piece of wood or any other material, as well as to circular vessels of different degrees of curvature. It may be clamped to the projecting end of a table or bench, or to a straight piece of wood projecting upward from the table or bench. In cities where water is brought into houses in pipes, and there are means of heating the water while in circulation, it is common to have rectangular troughs provided with hot and cold water pipes at the side of the laundry, for use as washing tubs; and the hinged clamps in Exhibit R are adapted for securing the apparatus to such troughs or tubs; and by reason of the clamps being hinged, the apparatus may be removed at pleasure, and without change attached to a circular tub. The hinged clamps, therefore, give to the apparatus Exhibit R a wider sphere of use than the

fixed clamp of Exhibit D. Take off the clamps from each of the apparatus respectively, and they would neither of them be of any practical use for the purpose of wringing clothes, until some means was devised and applied of holding them in a fixed position while in operation. The clamps, therefore, in my opinion, being essential to this class of apparatus, and there being a substantial difference between the hinge clamp and the rigid clamps, both in construction and operation, and that difference being accompanied by a wider extent of usefulness of the apparatus, giving one machine a capacity to be used where the other cannot be used, and at the same time having the capacity to be used where the other can be used, I regard the two apparatuses as substantially different. In looking at these machines I regard them as something more than mere wringing machines; they are portable wringing machines, and their portability consists in the means which they have of attachment by some structure sufficiently stable to hold them, and in proportion as that means of attachment is adapted to a greater or lees
115 variety of practical holding places which offer themselves in the laundry is the extent of the utility of the portability of the machine.

Int. 3. Have you examined and are you familiar with the patent granted to John Allender, January 11th, 1859, and reissued April 18th, 1865, No. 1934, and do you fully understand the mechanical construction and operation of the machine made according to the same?

Ans. I have examined and am familiar with a certified copy of said Allender reissued patent No. 1934, and believe I understand the construction and operation of the machinery described therein.

Int. 4. State whether or not the said machine marked R is substantially the same in its mechanical construction and operation as the machine described in said patent.

Ans. In my opinion, the machine marked R is substantially different in construction and operation from the machine described in said Allender patent. My reasons for this opinion are as follows: Aside from the difference between the two machines—which arises from the fact that the machine Exhibit R is a portable machine in the sense of requiring to be fixed to some point of support by means of a clamp attached to it; whereas the Allender machine is a complete machine, provided with a supporting frame—the machine Exhibit R differs substantially from said Allender machine, because the rollers of Exhibit R are substantially different from the rollers of said Allender machine, and the combining mechanism, whereby the rollers in Exhibit R are supported and held together, differs substantially from the combining mechanism whereby the rollers of said Allender machine are combined and held together. In the said Allender machine, as described in said reissued patent, the rollers are made of a spirally-coiled spring arranged on a shaft or roller, made smaller at the centre than at the ends, in order that the said rollers may have greater elasticity in the middle than at the ends. In Exhibit R I find no such construction. I am not able to examine the interior of the rollers in Exhibit R, but assume, from my general knowledge of the construction of such rollers, that they consist of a roller of vulcanized India rubber forced upon a spindle or shaft, of equal diameter throughout; and that the shaft is not made smaller at the centre than at the ends, and has no spiral spring arranged upon it for the purpose of giving greater elasticity at the centre than at the ends of the rollers. And so far as I can ascertain by applying pressure to
116 the rollers of Exhibit R, the elasticity is not greater at the middle than at the ends of the rollers, but, on the contrary, appears

to be equal. Therefore, I find that the rollers of Exhibit R contain neither the construction of the rollers described in said Allender patent nor the capacity of said rollers. In the said Allender reissue the rollers, constructed with a spirally-coiled spring arranged on a shaft or roller made smaller at the centre than at the ends so as to yield more at their centres than at or near their ends, are described as being covered with vulcanized rubber or other elastic compound impervious to water.

In Exhibit R I do not find any rollers so constructed or substantially so constructed and covered with vulcanized rubber, for the reasons I have before given. In point of fact, there is not even a covering of vulcanized rubber upon the rollers of Exhibit R, substantially such as the covering applied to the rollers of the Allender machine. There is a wide practical difference, well recognized by mechanics, between the covering of a roller and a roller itself. Rollers are well-known mechanical devices; they are cylinders of wood or iron or other material provided with gudgeons or shafts, the general practice being to make the roller of the diameter required, bore a hole in the axis of it, and drive it on a shaft, the shaft projecting beyond the roller at its ends, for the purpose of affording bearings and means of attaching mechanical devices to rotate the rollers. Such rollers have been from time to time covered with a clothing of leather, linen, woollen cloth, and, when used in carding engines, with leather, armed with wire carding teeth. It has never been the practice among mechanics, to my knowledge, to confound the roller itself with the covering, and I have never heard of a shaft being covered with wood, as a form of description of a wooden roller with a shaft of iron or other material. Now, in the machine Exhibit R the rollers themselves are cylindrical masses of vulcanized rubber, having a hole through their axis which receives the shaft, and do not differ in any respect, except in material or substance of which they are made, from an ordinary wooden or iron roller; and the difference between their capacity and that of wooden or iron rollers is due to the difference in the properties of their materials of which they are composed. Therefore, in my opinion, when the roller itself is composed of India rubber, it cannot be said to have a covering of India rubber. If these rollers in Exhibit R were to have, besides the shaft or spindle, a
117 roller of wood or iron and a covering of vulcanized India rubber, the covering of the proportionate thickness shown in the drawing of said Allender reissue, they would be of little or no practical use as wringing-machine rollers, as there would not be a sufficient mass or thickness of vulcanized India rubber to properly conform to the figure of the hard articles which accompany the clothes passed between the rolls, unless some provision were made similar to that in the rolls of the Allender machine, to give additional elasticity to the rollers; and these rollers in Exhibit R are too small to practically embody such provision. In the rollers of the Allender machine the requisite elasticity of surface is obtained by the combined action of the India-rubber covering, the spiral-spring surface of the inner roller, and the peculiar-shaped shaft. In the rollers of Exhibit R the required elasticity of surface is obtained by the use of the material India rubber for the roller itself. I consider it is as substantive an idea embodying a new principle in wringing machines to use India rubber as material for the entire roller as to use a rubber covering; because where the roller itself is entirely made of India rubber, it may be of very much smaller size than a practical roller which has a covering of India rubber, and yet operate equally as well, if not better. For instance, the rubber which might form the covering of one roller might be cast in the form of a roller of smaller

size, and used in connection with a shaft with greater efficiency than as before used with a roller, because there would be always a greater thickness of rubber at the point of pressure upon the clothes, the same amount of rubber being used in both cases. The greater efficiency following the dispensing with the hard roller and the making of the former covering into the roller itself, shows, in my opinion, that kind of departure from established former usage which constitutes substantial novelty; the change not being that of mere improvement, but of substantial difference in construction and mode of operation.

In the machine described in said Allender reissue, the rollers are combined together by means of cog-wheels. There are no cog-wheels combined with the rollers in Exhibit R, and no equivalents for them; therefore, in that respect Exhibit R differs substantially from the machine described in the said Allender reissue. In the said Allender machine, described in said reissue, there are described and shown springs so placed with relation to the rollers and the adjusting
118 screws that they are adjustible so as to convey to the rollers a variable yielding pressure, the degree of which depends upon the adjustment; and they are therefore properly termed in the reissued patent adjusting springs. In Exhibit R there is no spring or springs which communicate pressure to the rollers placed in such relation to the machine and rollers that they can communicate variable yielding pressure by adjustment, there being no means of adjustment in said machine. In the machine described in said Allender reissue, besides springs placed in such position relative to the rollers and other parts of the machine as to admit of being adjusted to varying degrees of tension, there is an adjusting screw which has the effect of increasing or diminishing the tension of the springs, forming a combination of rollers of a certain kind, with adjusting springs and adjusting screws, described in said patent. I do not find such combination, or substantially such combination, in Exhibit R; because, in my opinion, the rollers are substantially different from the rollers of the Allender machine, for the reasons I have before stated, and also because there is neither any adjusting screw or screws nor any equivalent or substitute for adjusting screws in said machine Exhibit R, and there are no adjusting springs or equivalents for them placed in such relation to the rollers in the machine Exhibit R as to operate as adjusting springs. If the springs in said Allender machine, when considered simply with relation to the rollers and without relation to the adjusting screws, are what is meant by the combination of adjusting springs and rollers described in said Allender patent, I do not find such combination, or substantially such combination, in Exhibit R; because in said Allender machine, if you were to take out the said screws, there would be no beneficial action of the springs. The lower roller would merely be supported by them, and the upper roller would lie upon the lower roller without any pressure except that of its own weight, and therefore I have, in giving my testimony, considered the combination of springs with the rollers described in said Allender reissue as a sub-combination included in and made operative by its relation to a larger combination, viz, that of the rollers, springs, and adjusting screws. Considered as a mechanical construction, the combining mechanism by which the rollers are held and pressed together with yielding pressure in machine Exhibit R is, in my opinion, substantially different from the combining mechanism by which the rollers are held and
119 pressed together by yielding pressure in the machine of said Allender patent. In Exhibit R the mechanism is very simple, consisting of two springs, supported by a cross-brace, the springs them-

selves holding the rollers in their proper position with yielding pressure. In said Allender machine said means consists of two side frames connected by cross-braces furnished with heads and housings, in which latter are situated two spiral springs, four boxes, and two compression or adjusting screws; the boxes being fitted so as to slide up and down in the housings of the frame, and if any of these parts I have mentioned are left out and no substitute provided for them, the machine will be inoperative. It requires in the construction of the Allender machine, in order to produce the results of its combining mechanism, a more complex system of mechanical devices than is found in machine Exhibit R.

Taken as devices, the springs in Exhibit R are substantially different from the springs in said Allender patent. The springs in said Allender patent must be compressed by power applied to them, in order that they should communicate pressure to the rolls; whereas the springs in Exhibit R do not require to be compressed for that purpose, and there is no means of compressing them. The springs of the Allender patent have a comparatively limited scope of action, within reasonable dimensions, and therefore require the means of adjustment in order to adapt them to be used as springs, with rollers operating upon different thicknesses of clothing; while the springs in Exhibit R have a comparatively large scope of action, and do not require to be adjusted to act as springs for the rollers when used with such different thicknesses of clothes as come within the capacity of the machine.

Int. 5. Please examine the specification of letters-patent granted to Joseph Jessop by the British government, No. 2588, dated A. D. 1856, as contained in volume twenty-one of Specifications of Inventions, now shown you, and say whether there are any, and what, substansial differences between the wringing machine described therein and the machine described in the said Allender patent in their construction and operation.

(Objected to as incompetent.)

Ans. I have examined said patent and understand the construction and operation of the wringing machine therein described. I find that the said wringing machine described in said Jessop patent is
120 substantially the same in all respects in construction and mode of operation, in all respects, as the machine described in said Allender reissued patent, excepting in the mode of construction of the rollers and the materials of which the rollers are composed. Said Jessop patent describes a wringing machine which has squeezing rollers of wood placed upon proper shafts and supported by side frames, in which are boxes, adjusting springs, and adjusting screws, substantially like the arrangement in the Allender patent. The spring described in the Jessop patent is a cylinder or chunk of rubber, which is the common substitute for spiral springs, such as are shown and described as adjusting springs in the said Allender reissue. In the machine in the Jessop patent the adjusting springs are placed immediately under the adjusting screw and over the axis of the top roller, while in said Allender reissue the adjusting spring is placed underneath the bottom roller. This is, in my opinion, a mere formal difference, the action of the adjusting screw in both cases being the same upon the adjusting spring.

Int. 6. Please examine volume fourteen, Specifications of Patents for Inventions granted by the British government, No. 1478, dated A. D. 1857, May 25, to William S. Underhill, for improvements in wringing machinery, and state in what respects, if any, the machine referred to in the preceding answer, and described in said British patent, would differ from the machine described in the said Allender patent, if the rollers described in said Underhill patent were substituted in the said

Jessop machine for the rollers of said machine as described in said Jessop patent.

(Objected to—the competency of the book offered witness and the competency of the proof sought by the interrogatory.)

Ans. I have examined the printed official copy of the Underhill English patent referred to in the question, and believe that I understand the contents thereof. The said Underhill patent contains a description of improvements in wringing machines, which said improvements consist in covering rollers used in wringing machines with vulcanized India rubber, or other elastic or resilient material, and also of making the rollers themselves of vulcanized India rubber, and placing them on a proper spindle or shaft. There are two forms of construction more especially described in said Underhill patent, one of which is to secure a series of stout, vulcanized India-rubber rings upon a
121 spindle by screws at either end of the series of rings. Another is to make the roller itself of India rubber by fixing a tube of India rubber of sufficient thickness upon a spindle. In constructing rollers in this manner, according to the usages of mechanics, I should cut a screw thread upon a spindle near both ends, or at sufficient distance apart for the length of the rubber roller, and put upon the screw the ordinary washer and nut used for screwing together parts by mechanics. Before putting the nuts and washers on the spindle I should put on the rings or rollers of rubber, the hole in which would be a proper size to fit the spindle, and then put on the washers and nuts, and screw up the nuts towards each other, making pressure upon the ends of the rubber, the washers interposing between the nuts and the rubber to enable the nuts to operate properly, as they do in ordinary mechanical contrivance. Now, this Underhill patent states that the India rubber, possessing so great resiliency, acts as a cushion, and prevents the garments or other articles under operation from being too harshly pressed; and it also states, in substance, that these vulcanized India-rubber rollers or covers of rollers are to be applied in place of the rollers usually made of wood or other non-elastic material in wringing machines for wringing clothes, and directs that such rollers shall be placed in any wringing machine for wringing clothes which formerly had rollers of wood or other non-elastic material. If such rollers were placed in the clothes-wringing machine described in the said Jessop English patent in place of the wooden rollers in said machine, the machine would then be substantially the same in construction and mode of operation, except in respect to the peculiar construction of the rollers of the said Allender machine; namely, the spiral spring coiled around a shaft, made smaller in the middle than at the ends, and the peculiar and special mode of operation, that of the application of greater elasticity to the middle of the rollers, which is the consequence of the said peculiarity of construction. The Jessop machine, as altered, by substituting, for its wooden rollers, rollers made of or covered with vulcanized rubber, such as described in said Underhill English patent, would contain a combination of rollers for washing or wringing machines made of or covered with vulcanized rubber, and an adjusting spring or springs, substantially as described in said Allender reissue, and would also contain rollers for washing or wringing machines made of or covered with vulcanized rubber, used in combi-
122 nation with adjusting spring or springs, and screw or screws to adjust the pressure to the springs and rollers, unless one of the elements in both of the said combinations—namely, the rollers—be limited to such rollers as are specially described in said Allender reissue—namely, rollers made of a spirally-coiled spring, arranged on a shaft or roller

made smaller at the centre than at the ends; and as I do not find any other kind of rollers described or suggested in said Allender reissue, I consider the above-mentioned combination limited to that special kind of rollers, or their equivalents, and, therefore, that the Jessop machine, altered by the substitution of the Underhill rollers, would not contain substantially the two combinations above mentioned.

(Objection: The first sentence of the answer is irrelevant so far as the word "official" is concerned, and as irresponsive to the question put to the witness, and incompetent as a mode of proof.)

Adjourned to Wednesday, at 11 a. m.

Int. 7. Is the printed document marked Exhibit 3, C. W. T., Examiner, the copy of the Underhill patent referred to by you in your preceding answer?

(Objected to: 1st. That no paper, printed document, has been put in evidence, or offered in evidence, marked Exhibit 3. 2d. That neither the assumed Underhill patent nor any assumed copy thereof has been proved. 3d. Objections going to the competency and relevancy of this interrogatory and examination to the issues in the case, the full statement of which by agreement and consent are to be made at the hearing.)

Ans. The printed document, marked Exhibit 3, C. W. T., Examiner, purporting to be a specification of William Scott Underhill, is the document I had in my hand and had examined previously to my answering the last question. The book referred to in the said question not being present, by consent of counsel I assumed this printed document to be a copy of the specification of the said Underhill patent, referred to in the question, as being contained in the book. The said book being now present, I find that the part of it referred to in said preceding question contains a fac-simile printed copy of all the printed matter upon white paper contained in document Exhibit 3, C. W. T., Examiner; but that the book does not contain the printed matter printed upon the blue paper of the said document Exhibit 3, C. W. T., Examiner.

123 (The defendant here puts in as evidence the said printed document marked Exhibit 3, C. W. T., Examiner, purporting to be "Provisional specification left by William Scott Underhill at the office of commissioner of patents, with his petition, on the 25th May, 1857;" also, "Specification in pursuance of the conditions of the letters-patent filed by the said William Scott Underhill, in the great seal patent office, on the 25th Nov., 1857." Plaintiff objects to Exhibit 3, C. W. T., Examiner, offered as above, for the second and third reasons stated in the preceding objection.)

Int. 8. State whether or not the said Underhill, in said specification, limits the mode of fixing a tube of vulcanized rubber upon the shaft to the mode of fixing it described by you in your answer to the sixth interrogatory.

(Objection to examining witness on Exhibit 3.)

Ans. Upon re-examining said Underhill specification contained in Exhibit 3, I find the mode of fastening, which I described in the answer referred to in this question, to relate to the fastening of the India-rubber rings more especially; and that said specification states that the rollers may be made by fixing a tube of India rubber of sufficient thickness upon a spindle, by which direction I understand that any sufficient mode of fastening may be used. That part of the specification which describes screws as the mode of fastening also states that the equivalents of such a mode of fastening may be used. The tubes or the rings

might be fastened by pins drove through the rubber at the ends of the roller into the shaft, or screwed into the shaft; or they might be fixed by connecting the tube to the shaft, or by the contraction of the tube upon the shaft or spindle, the latter having the ordinary rough surface of rolled round iron, or roughened in any way. The said specification directs the rubber to be fastened in some way, but it does not seem to me that any special mode of fastening is insisted upon.

Cross-examination—interrogatories propounded by C. L. Woodury, esq.:

Cross-int. 1. (De bene esse.) State when you were last in England.

Ans. I cannot state when I was last in England, because I have never been there.

Cross-int. 2. In the course of your fourth answer you say, speaking of Exhibit R, "There are no adjusting springs, or equivalents for
124 them, placed in such relation to the rollers in machine Exhibit R as to operate as adjusting springs." Please explain what you intended us to understand on this point.

Ans. I meant by that portion of said answer that said Exhibit R, in my opinion, did not contain adjusting springs such as are described in the said Allender reissue patent, and having their mode of operation; and also that it did not contain any equivalent for such spring placed in such relation to the rollers in the machine as to operate as adjusting springs substantially in the manner described in the said Allender reissued patent. By the words "placed in such relation to the rollers in the machine," I meant not only to convey the relation of the spring to the rollers, but also to the rest of the machine, in the comparison I was making.

Cross-int. 3. Do the springs in Exhibit R perform the functions or duty of adjusting the rollers therein, and when do they do so?

Ans. They do not perform the function of adjusting the rollers; they merely support and hold them together, and resist force, which may be applied to force them apart, to the extent of their capacity of resistance.

Cross-int. 4. Do not the springs in R bring back the rollers to their former relations when the force you speak of ceases to be employed to force them apart to the extent of their capacity of resistance?

Ans. They do not, unless there should be no opposing material between the two rollers. The force is applied by means of the crank by turning it by hand; and the converging curved surfaces of the rollers acting upon the material, the said material is drawn in between the rollers by the rotation of the same; when the material has been drawn in, and the machine is at rest with material in it, there is no force then exercised by the material; but the material will prevent the rollers from being pressed in contact with each other by the spring.

Cross-int. 5. Do not the springs in Exhibit R bring back the rollers to their former relations when the force which you speak of in your fourth cross-answer ceases to be applied to force them apart to the extent of their capacity of resistance, and there remains no opposing material between the two rollers?

Ans. Yes.

Cross-int. 6. Do you not consider this to be the performance, by the springs of R, of a function or duty of adjusting the rollers therein when being operated?

125 Ans. I do not; it is merely the performance of the duty of holding the rollers together. The adjustment of the rollers with respect to each other, at different distances from each other while in

operation, depends upon the material introduced, and the power applied to the machine through the crank. When the material is out of the machine, it has no capacity for adjustment of the rollers with respect to each other either as to distance or pressure, the distance and pressure being always the same when the machine is not in operation.

Cross-int. 7. When Exhibit R is in operation, do you mean to be understood that the springs have no part in the adjustment of the rollers with respect to each other at different distances from each other, but that said adjustment depends on the material introduced, and the power applied to the machine through the crank exclusive of the spring?

Ans. I do. The springs resist every attempt to adjust the rollers at different distances from each other, and I am therefore of opinion that they cannot be said to assist in such adjustment of rollers any distances apart from each other. The springs press the rollers together, and resist their being pressed apart; and without something is introduced into the machine, either between the rollers or between the members of the springs, the rollers cannot be adjusted at different distances apart. If by these questions relating to adjustment my opinion is desired as to whether the springs in Exhibit R will press the rollers together after they have been forced apart and the obstruction removed, my answer is, that they will; but I do not consider that as coming under the term adjustment. Adjustment, in mechanics, is a provision for changing the relation of parts as to distance or pressure by means of mechanism, which will maintain the changed relation of the parts adjusted until said mechanism is again operated to further change said relations. An example of such mechanism is the adjusting screws in the Allender machine, and their relative arrangement with the springs and rollers in said machine.

Cross-int. 8. When Exhibit R is in operation, do you mean to be understood that the springs have no part in the adjusting of the rollers with respect to each other at different distances from each other, but that the said adjusting, in the ordinary and usual operation of the machine, exclusively depends upon the material introduced, and the power applied through the crank?

126 Ans. The operation of forcing the rollers apart by the introduction of the clothes between them, when the machine is operated by the crank, cannot be strictly called adjusting the rollers, because it has no reference to a permanent change of position or a definite change of position for a series of operations, as would be the case if the rollers were drawn apart or the pressure upon them relieved by the act of adjusting an adjusting mechanism. But in the sense that I suppose "adjusting" is used in the question—that is, the change of position of the rollers by the introduction of the material—it is obvious that the change is due to the material and power applied to the crank alone; because, if no material is introduced, no change of pressure or position will take place in the machine. The springs do undoubtedly yield to permit the rollers to be forced apart by the material, and they react to press the rollers together or towards each other in Exhibit R. But not being adjustable, they exercise always the same pressure when the rollers are at the same distance apart, and they always hold the rollers together with the same pressure when there is no material introduced between them.

Cross-int. 9. Are we to understand that, in your opinion, the springs used in Exhibit R cannot be properly termed adjusting springs because

there is no provision to permanently change the relations of the rollers to each other connected with them?

Ans. Not for that reason alone; but because they are not placed in connection with any means of adjustment which will change either the pressure of the springs or the position of the rollers and maintain such changed relations until such adjusting mechanism be again operated to produce another change.

Cross-int. 10. Do you consider that the springs in Exhibit R practically make the rollers self-adjusting to accommodate the varying thicknesses of the clothes passing through them when in operation, so far as the capacity of the machine permits?

Ans. I consider that the springs in Exhibit R, taken in connection with the rest of the apparatus, permit the rollers to be self-adapting to the different thicknesses of clothes; but there being no adjusting mechanism to control them, I do not consider that they make the rollers self-adjusting.

Cross-int. 11. What mechanism to control those springs in R would make the rollers, in your view, self-adjusting for the practical operation of the machine?

127 Ans. I do not know. It would have to be invented. It must be some mechanism which, actuated by the movement apart of the rollers to accomodate clothes of a given thickness, would operate upon the spring so as to hold it in the position it occupied when forced apart the required distance by said movement of the rollers, and at the same time permit the spring to resist to the extent of its capacity being further forced apart.

Cross-int. 12. Then are we to understand the self-adapting arrangement of the rollers of Exhibit R, to accommodate the varying thickness of the clothes passing through them in their practical operation, cannot be deemed a self-adjusting arrangement, unless the action of the springs be momentarily stopped or arrested when in operation by the interposition of some mechanism acting on the spring to limit or restrain its freedom?

Ans. It may be regarded as a self-adjusting arrangement by some who use the term self-adjusting as synonymous with self-adapting, but I do not regard it so. I consider the term adjusting to have a definite mechanical meaning, which is different from the term self-adapting for reasons I have before given. In order that I may not be misunderstood, I will here state that self-adjusting applies to a mechanical construction that not only adjusts and maintains an adjustment of parts, but also adjusts the parts automatically by the operation of the machine, and leaves them so adjusted until a readjustment is required.

Cross-int. 13. In looking at the Figure 2 of the Allender patent drawings, are not the springs represented as so arranged that when the rollers are forced apart by the action of the clothing introduced and the crank, the springs will act to resist and to return the rollers to their former relations, acting with the material going through to produce what you say is properly called the self-adapting action of the rollers?

Ans. The drawing, Figure 2, referred to represents only one side of the Allender machine, consequently represents only one spring, and therefore does not contain springs in the plural, as mentioned in the question; moreover, the drawing, Figure 2, by itself does not represent the position of the rollers; it only represents the position of the axes of the rollers, and I cannot, therefore, answer the question by reference to drawing Figure 2 alone; but must, in order to give any intelligent answer to the question, consider it in relation to the other draw-

128 ings and the descriptive matter which refers to the letters of reference upon all the drawings.

Cross-int. 14. In looking at Figure 2 of the Allender patent drawings, is not the spring there represented shown as if arranged to resist when the rollers are forced apart, and to return the same to their former position when the material passing through is withdrawn, acting with the material to produce what you denominate a self-adapting action of the rollers?

Ans. The drawing, Figure 2, as I have before stated, does not show the position of the rollers except by the position of the axes of the rollers; neither does it show the form of the rollers; but taking the rollers to be of the form shown in Figure 1, and also in section in Figure 3, their surfaces are not pressed in contact with each other and cannot be pressed in contact with each other, because the hoops K at each end of the roller project out beyond the surface of the rubber to such a distance as would, in practical rollers shown in the drawings, prevent, by abutting against each other, the rubber coverings of the two rollers from coming in contact with each other; and the space between the rubber surfaces of the two rollers thus compelled by these hoops would permit the passage of clothes of considerable thickness between the rollers, without producing any flexure of the spring beyond that which it has already received from the adjusting screws. Therefore clothes might be passed between the rollers without producing any action of the spring whatever. If clothes of a thickness sufficient to produce pressure upon the spring beyond that already imparted to it by the adjusting screws were introduced, the spring would then act and react to a limited extent as an adapting contrivance to permit the rollers to be moved further apart; but the extent to which they would act as an adapting contrivance would be limited and controlled by the adjusting mechanism. For instance, if the adjusting screw or screws were turned so as to force down the spring until the coils came nearly in contact with each other, the degree of pressure would be very much increased by such adjustment, but the capacity for adaptation would be practically destroyed, because the spring could not act but to a very limited extent as an adapting device. If the adjusting screws should be still further turned so as to bring the coil of the spring together, the pressure would be still further increased by such adjustment, but the capacity for adaptation would be entirely
129 destroyed. If the adjusting screws were turned back a sufficient number of turns to relieve the adjusting spring from any pressure of the adjusting screw, and also to relieve the upper roller, or, to speak more accurately, the box which contains the bearings of the upper roller, from contact with the end of the screw, so that it could rise without obstruction by the screw, then the springs would not act in any way as springs. The upper roller would rise to permit the clothes to pass through. In this Allender machine, represented in the drawings referred to, the springs can have no operation as springs, irrespective of their relation to the adjusting screw. They do not hold the rollers together; on the contrary, they act to lift both rollers or support both rollers without pressure until the adjusting screws are brought to bear in opposition to the springs.

(Objected to all that part of the answer beginning at "For instance" and ending at "In this Allender machine;" also, all that commencing "but taking the rollers to be of the form shown in Figure 1," and ending at "If clothes of a thickness;" and, also to all that sentence commencing "In this Allender machine," to the end of the answer as irrelevant to the interrogatory, and irresponsive and incompetent; also, to the whole answer as irresponsive.)

THURSDAY, *February 6th.*

Cross-int. 14. In looking at the drawing, Figure 2, now before you, of the Allender patent, are not the boxes shown in that drawing as pressed upon the top and the bottom by solid substances, the spring being below the said boxes, and the lower end of the screw pressing or butted against the upper side of said boxes in a manner which would permit rollers in the machine to act on materials of unequal thicknesses passing through the machine in the same manner that they would act if the screw was not capable of being moved by hand and was in the position shown in the drawing, Figure 2?

Ans. It is impossible to tell from the drawing, Figure 2, alone, whether there is any pressure exercised on the boxes by the adjusting spring or the adjusting screw, the drawing merely showing the lower box as resting on the adjusting spring, and the upper box as in contact with the lower end of the adjusting screw. If no pressure were put upon the adjusting spring by operating the adjusting screw, then the machine would not be in a practicable condition to squeeze
130 clothes of some thicknesses, because pressure is necessary. [Assuming that the drawing is intended to represent the machine as having pressure upon the adjusting springs in the position in which the adjusting screws, boxes, and adjusting springs are placed, the rollers would not operate in the same manner as if there were no power of movement in the adjusting screws, because the adjusting screws would have been moved to make the adjustment of the pressure upon the adjusting springs represented by said drawing; neither the drawing, Figure 2, nor any other part of the drawings, shows the adjusting spring separate from association with the adjusting screw, and, therefore, I cannot tell whether the adjusting screw is represented as under pressure in Figure 2, but have to assume that it is, from my knowledge of the descriptive portions of the patent which refer to the drawing, Figure 2, among the other drawings of the patent.] Whether the spring be under pressure or not, if clothes of sufficient thickness are introduced between the rollers to force the rollers apart, the adjusting spring and adjusting screw being in position shown in the drawing, Figure 2, the rollers will adapt themselves to variations of the thickness of the clothes in two ways: one by the yielding of the adjusting spring; the other by the yielding of the spiral-spring roller and its India-rubber covering; but, as I have said before, clothes of a certain thickness may be passed between the rollers without causing them to change their positions by reason of the projections on the rollers formed by the metal hoop at each end of the rollers next to the cog-wheels.

(Counsel for plaintiff objects to all the answer within the brackets placed by the commissioner to indicate the part excepted to as irresponsive.)

Cross-int. 15. (De bene esse.) When you say that "the adjusting screws would have been moved to make the adjustment of pressure on the adjusting springs represented by said drawing," in your last answer, please refer to the question, and state whether you understood that it asked an opinion based upon the condition that the set screws were not to be moved during the time as to which the opinion on the action of the rollers was inquired of.

Ans. I understood the question to assume, first, that the boxes were pressed upon the top and the bottom, the spring being below the said boxes, and the lower end of the screw pressing against the upper side of said boxes; and I answered that the drawing alone did not
131 show such a state of things; but, taken in connection with the

specification, I assumed that it did show such a state of things. The question further inquired, in substance, if the parts in such relations were operated, whether the rollers in the machine would not act upon materials of unequal thicknesses passing through the machine in the same manner that they would act if the screw was not capable of being moved by hand, and was in the position shown in the drawing; and I answered no, because the screw had to be moved by hand to get it into the position shown in the drawing. I did not assume, in my answer, that the screw was moved during the operation of the machine on clothes, because I understood from the question that it was to be considered immovable.

Cross-int. 16. (De bene esse.) Please explain how it is that the fact that the screw had to be moved by hand to put it in position as part of the machine, which you have stated, has any effect on the inquiry made of you in the fourteenth cross-interrogatory.

Ans. In making this explanation I will assume, first, that the screws are not in the machine. They must, in such case, be entered into the screw hole in which they turn, and by moving them round by hand they are screwed down through the screw hole to a position somewhere above the boxes; if they were not capable of being moved by hand this could not be done; there would be no screws there to press upon the upper boxes, and the upper boxes and upper roller would lift to let the clothes through without producing any action on the spring or screws either, and there would be no operative machine. Assuming that the screws have been placed in the screw holes, and have been screwed down to a position in which the lower end of the screw was coincident with the lower side of the cap containing the screw hole, and then something should be done to the screw which should render it incapable of being moved, it could not be screwed down upon the box, and therefore the box would be free to lift up and allow the upper roller to be lifted up by the clothes to be introduced. Therefore, if the adjusting screw or screws are not capable of being moved so as to make pressure upon the upper boxes, and thereby through the rollers and lower boxes make pressure upon the springs, there would be no practically operating machine; the springs would not act unless a sufficient thickness of clothes were introduced to lift the upper roller high enough to bring it in contact with the top cap, and also to make pressure sufficient upon the machine for
132 a squeezing operation; but in such condition would not be even adaptable to squeezing of clothes of variable thickness in the sense such term is used in relation to wringing machines. The drawing, Figure 2, represents a construction in which the adjusting screw is essential, and in which it is also essential that the adjusting screw shall have a capacity to be turned by hand in order to make the machine practically useful; and there is no hint or suggestion conveyed to my mind by the drawing, or by any of the descriptive portions referred to by the drawing by the letter of reference on the drawing, that the adjusting screw or screws can be dispensed with, or that any substitution for them is to be or can be used. Moreover, the letter of reference F upon the adjusting screw of said drawing refers me to the descriptive matter connected with said drawing, wherein I find the following statement: "The screws F F act against the top boxes C, to press the rollers together and press them down, and press the boxes C against the spring E to produce the required pressure between the rollers for the cloth or clothes to be squeezed," by which I understand that the springs are such as to require she pressure of the adjusting screw in order to produce the required pressure between the rollers. Now, this required pressure can only be given by the

screws to the springs by turning the screws by hand; and if the screws cannot be turned by hand, and are immovable, my conclusion is that the springs described will not give the required pressure for squeezing the clothes.

(Counsel for plaintiff objects to the whole answer as irrelevant to the question put to witness, and incompetent.)

Cross-int. 17. Is the above as direct and responsive an answer to the sixteenth cross-interrogatory as your intelligence and candor can furnish?

Ans. It is. I was asked for an explanation, and in my answer endeavored to give a full explanation of the operation of said screw and said springs, and the other parts, which form the subject of the preceding inquiry, and to show why it was the screw must be capable of being moved in order to make the machine as constructed practically operative for squeezing clothes, thereby showing its effect on the inquiry made in the former question referred to.

Cross-int. 18. Please now state, when the Allender model is constructed with the set screws and springs bearing upon the boxes
133 as shown in Figure 2 of the drawings of the Allender patent, will the rollers of the machine be self-adapting in operation to the clothes passing through them whilst the screws remain unchanged in that position equally with what the rollers would be were the screw secured immovably in the position indicated?

Ans. As I understand the question, it supposes two cases, the first of which cases comprises both adjustability and adaptability, because the screws are in a condition to be moved to adjust or readjust the machine. The latter case comprises only adaptability, because the screws are in a condition incapable of being moved to adjust or readjust the rollers. The adaptability of the rollers, in both cases, would be the same, the pressure being the same. The function of adjustability would be destroyed by the alteration of the machine, supposed in the hypothesis in the latter case, and there would no longer be adjusting springs in the machine or adjusting screws, because the adjusting screws must have the capacity of being moved in order to make the springs adjusting springs.

Cross-int. 19. Then I understand that the springs E of the drawing would no longer have anything to do in the operation of the machine, in your view, for purposes of adjusting, but would become purely adapting springs if set screws were immovable in the condition indicated to you in the last question?

Ans. They would the moment the set screws were so disorganized as to become immovable. They would not then be in relation to the rollers and an adjusting mechanism, and would not form a part of an adjustable wringing machine. All wringing machines for clothes are adaptable, whether the rollers are held together by weighted levers or by springs; but they are not adjustable to different degrees of pressure on the same thickness of clothing without the addition of adjusting mechanism. When you destroy the adjusting mechanism of an adjustable wringing machine, and leave the machine in a condition to operate as a wringing machine, the feature of adaptability remains.

Cross-int. 20. Then, if in a laundry one of the Allender machines was to be used for clothes wringing for a year, without moving the set screws, during that time the machine would in practice be adapting and the adjusting mechanism would be dormant, though present, would it not, in your view?

Ans. No. The adjusting mechanism would be in a condition
134 to be used whenever required, and it would be dormant in the sense that a Colt's revolver would be dormant, in part, if one should only fire off charges from one of the six chambers in the cylinder. The adjustable feature would be still there, although not used. It would be active as being one of the parts of the combination of devices which make up the machine that is being used. It would be active in holding the rollers with pressure against the spring; and, if you were to take it out of the machine, you would have to substitute some other contrivance in order to make an operative machine that would be adapting, or, which would be the same thing, destroy its capacity as an adjusting mechanism, and put it back into the machine to serve as a mere resisting block. The machine, as I have said before a number of times during this cross-examination, would be both adapting and adjustable under the circumstances inquired of, although the adjusting mechanism had only been used once to make the necessary adjustment to the parts of the machine, and allowed to remain as adjusted for the length of time required in the question.

Cross-int. 21. Are the wringing parts or mechanism in R and D, considered irrespective of the mode of fastening them upon the tub or vessel, similar or unlike?

Ans. So far as I can see from inspection, the parts inquired of, irrespective of the difference between the hinge clamps and the rigid clamps, are the same in substance; but I have no opportunity of examining the internal structure of the rollers of each of the exhibits inquired of, and therefore give my opinion upon the assumption that both have rollers of vulcanized rubber drawn upon a spindle of equal diameter throughout.

Cross-int. 22. What is mangling?

Ans. It is the operation of smoothing linen or other clothes by rolling them between rollers, instead of smoothing them by rubbing smooth substances over them. Sometimes the clothes that are mangled are folded of a number of thicknesses and drawn between rollers, and sometimes they are wound round a roller and subjected to the action of another roller under pressure.

Cross-int. 23. (De bene esse.) If you should put the Underhill roller, referred to in your examination-in-chief, into the Jessop machine inquired of, would the Jessop machine continue to be a wringing and mangling machine?

Ans. It would continue to be a wringing machine, and, I think,
135 would operate to a useful extent as a mangling machine. It would enable the machine to be used for mangling clothes that had buttons upon them. It might not produce as smooth work as a metal roller in a mangling machine, but I think it would do as well as a wooden roller, which latter is, I believe, the kind of roller described in the Jessop machine.

Direct resumed:

Int. 9. You have stated in your cross-examination that the metal bands on the ends of the rollers next to the cog-wheels are shown in the drawings of the Allender patent as projecting beyond the surface of the rubber covering of said rollers; please state whether or not they are so shown on Exhibit "Allander Machine."

Ans. They are not so shown on Exhibit "Allender Machine;" but, on the contrary, they are below or within the circumference of the rest of the rollers, a portion of the covering being cut away or recessed at each

end of the roller to permit them to lie within the circumference of the rest of the roller. In the drawing, there is no such recess or depression of the cover of the roller, but the bands are placed outside of the circumference of the roller.

F. C. TREADWELL, JR.

FRIDAY, *February* 7, 1868.

Counsel for defendant here puts in evidence letters-patent, granted to Daniel W. Swift, for an improved clothes wringing machine, dated January 28, 1862, numbered 34276, and marked Exhibit 5, C. W. T., Examiner; also the original letters-patent granted to John Allender, dated January 11, 1859, and numbered 22539, and marked Exhibit 6, C. W. T., Examiner; also the reissued patent to S. A. Bailey and S. S. & B. M. Cook, dated June 28, 1864, numbered 1709, and marked Exhibit 7, C. W. T., Examiner; also the reissue patent granted to S. A. Bailey and S. S. & B. M. Cook, November 8, 1864, marked Exhibit 8, C. W. T., Examiner; also official copies of the records of the patent office of the proceedings and correspondence on the application of said Bailey and Cook for a reissue of the original patent granted to John Allender on and before the 28th of June, 1864, and marked Exhibit 9, C. W. T., Examiner; also official copies of the records of the patent office of the proceedings and correspondence on the application of the said S. A. Bailey and Cook for a reissue of the said letters patent on and
136 before November 8, 1864, and marked Exhibit 10, C. W. T., Examiner; also official copies of the records of the patent office of the proceedings and correspondence on the application of said S. A. Bailey and Cook, for a reissue of the said letters-patent on and before April 18, 1865, and marked Exhibit 11, C. W. T., Examiner.

All the foregoing exhibits from 5 to 11, inclusive, objected to.

It is agreed between counsel that the original papers, marked from twelve to nineteen inclusive, may be used at the hearing by either party and need not be printed.

The defendant also puts in evidence a copy of the letters-patent to Joseph Jessop, No. 2588, and marked Exhibit 4, C. W. T., Examiner.

RESPONDENTS' EXHIBITS.

[*Exhibit* 1, *C. W. T., Examiner.*]

50 Dolls. 00 Cts. BOSTON, *May* 17 1866.

Shawmut National Bank.

Pay to S. S. Cook Tr. or order, Fifty Dollars.

No. T. J. ALEXANDER, *Agt.*

(Indorsed:)

Pay to Bailey Washing & Wringing Machine Co.,

S. S. COOK, *Tr.*

Bailey W. & W. Machine Co.,

J. P. WHIPPLE, *Treas.*

For collection on account of Woonsocket National Bank,

L. M. BALLOU.

[*Exhibit* 2, *C. W. T., Examiner.*]

At a meeting of the Directors, held June 25 '64
It was Voted that S. J. Dennis Treas'r be and is hereby authorized & directed to execute on behalf of this Corporation Articles of Agreement with the Metropolitan Washing Mch Co. of Middlefield Conn. and also with said Corporation & Haley, Morse & Boyden of Boston to procure India Rubber Rolls, & the right to use & vend the same in Clothes Wringing Machines made by this Corporation in such manner & form as is required by the parties aforesaid & as in his judgment he may deem proper—subject to the approval of L. L. Tower one of the directors—

137 [*Exhibit* 3, *C. W. T., Examiner.*]

A. D. 1857. No. 1478.

WRINGING MACHINES.

Letters patent to William Scott Underhill, of Newport, in the county of Salop, manufacturer, for the invention of "Certain improvements in wringing machines."

Sealed the 20th November, 1857, and dated the 25th May, 1857.

Provisional specification left by the said William Scott Underhill at the office of the commissioners of patents, with his petition, on the 25th May, 1857.

I, William Scott Underhill, of Newport, in the county of Salop, manufacturer, do hereby declare the nature of the said invention for "Certain improvements in wringing machines" to be as follows:

This invention consists in making the rollers used in the above-named machines of vulcanized India rubber or other elastic material, either solely or in conjunction with wood or metal rollers, so that the elastic material will admit of buttons or other similar attachments to clothing passing through without injury, whilst at the same time the pressure is sufficiently great to force out the water & render the articles comparatively dry.

138 Specification in pursuance of the conditions of the letters-patent, filed by the said William Scott Underhill in the great seal patent office on the 25th November, 1857.

To all to whom these presents shall come, I, William Scott Underhill, of Newport, in the county of Salop, manufacturer, send greeting:

Whereas her most excellent Majesty Queen Victoria, by her letters-patent, bearing date the twenty-fifth day of May, in the year of our Lord one thousand eight hundred and fifty-seven, in the twentieth year of her reign, did, for herself, her heirs, and successors, give and grant unto me, the said William Scott Underhill, her special license that I, the said William Scott Underhill, my executors, administrators, and assigns, or such others as I, the said William Scott Underhill, my executors, administrators, and assigns, should at any time agree with, and no others, from time to time and at all times thereafter during the term therein expressed, should and lawfully might make, use, exercise, and vend, within the United Kingdom of Great Britain and Ireland, the Channel Islands, and Isle of Man, an invention for "Certain improve-

ments in wringing machines," upon the condition (amongst others) that I, the said William Scott Underhill, by an instrument in writing under my hand and seal, should particularly describe and ascertain the nature of the said invention, and in what manner the same was to be performed, and cause the same to be filed in the great seal patent office within six calendar months next, and immediately after the date of the said letters-patent:

Now, know ye that I, the said William Scott Underhill, do hereby declare the nature of my said invention, and in what manner the same is to be performed, to be particularly described and ascertained in and by the following statement, that is to say:

This invention has reference to that portion of the machines known as wringing machines termed the rollers; these rollers are usually made of wood or other non-elastic material, and as all the articles which have been washed or saturated have to pass between these rollers in order that the water may be squeezed out of them, it is often found, from the extreme rigidity of wood rollers, or rollers formed of
139 non-elastic material, that buttons are broken and torn from garments, and that delicate articles are liable to considerable damage.

My improvements consist in making the rollers used in such machines of vulcanized India rubber or other elastic or resilient material, and I propose to employ for this purpose one or more of such rollers. When one is used it will, of course, be in conjunction with ordinary wood or metal, or other hard and non-elastic rollers, but all the rollers in the machine may, if preferred, be covered with elastic or resilient material, so that they will admit the passage of clothes or other articles between them, pressing them sufficiently for the purpose of wringing out the water, but without injuring the articles by breaking or tearing off buttons, or otherwise damaging them. In making these rollers, I prefer the following mode of construction: A number of stout vulcanized India-rubber rings are placed upon a spindle and fastened at either end by screws, or the equivalents thereof, which will keep them always in position, the usual adjusting screws being retained to regulate the horizontal position of the rollers, or the rollers may be made by fixing a tube of India rubber of sufficient thickness upon a spindle, though the mode first described will probably be found the best in practice. The India rubber possessing so great resiliency acts as a cushion, and prevents the garment or other articles under operation from being too harshly pressed, and if only one such roller be employed, working in conjunction with others of wood, metal, or other non-elastic material, the pressure between the two will not be nearly so severe as with two non-elastic rollers, whilst, at the same time, it will be found sufficient for the purpose. Other elastic or resilient material, such as a compound of India rubber with fibrous or woven material may also be used for making or covering these rollers.

Having thus described the nature of my said invention, and in what manner the same is to be performed, I claim the improvements in wringing machines, by making one or more of the rollers used in such machines of vulcanized India rubber or other elastic or resilient material, or covering such rollers with elastic or resilient material, as herein more fully set forth and specified.

140 In witness whereof I, the said William Scott Underhill, have hereunto set my hand and seal this twenty-first day of November, in the year of our Lord one thousand eight hundred and fifty-seven.

WILLIAM SCOTT UNDERHILL. [L. S.]

Witness:

JOHN SMITH.

[*Exhibit* 4, *C. W. T., Examiner.*]

A. D. 1856. No. 2588.

MACHINERY FOR WASHING, WRINGING, AND MANGLING.

Letters-patent to Joseph Jessop, of Westgate, Bradford, in the county of York, for the invention of "Improvements in machinery for washing, wringing, and mangling."

Sealed the 1st May, 1857, and dated the 4th November, 1856.

Provisional specification left by the said Joseph Jessop at the office of the Commissioner of Patents, with his petition, on the 4th November, 1856.

I, Joseph Jessop, of Westgate, Bradford, in the county of York, do hereby declare the nature of my invention for "Improvements in machinery for washing, wringing, and mangling" to be as follows: My improvements in machines for washing, wringing, & mangling are represented in the drawing hereunto annexed.

Fig. 1 represents the machine in perspective, showing the front & one end; Fig. 2 represents a similar view of the back, while Figs. 3, 4, 5, 6, 7, & 8 show some of the parts detached.

E is the tub or barrel in which the washing operation is conducted; this tub is fixed between the end frames of the machine; it is shown separately, in longitudinal section at Fig. 4, and in transverse section at Fig. 5. It is furnished on the interior with a number of what I term rollers, being greater or less portions of or complete cylinders F F of wood or other suitable material; these may either be fixed to the cylinder or mounted on a skeleton drum, and may be caused or permitted to revolve within the tub E E. C is what I term the dasher,
141 separately represented in Fig. 3; it is fixed on the spindle passing through the centre of the tub, which is caused to revolve by means of the spur gearing G and winch handle, or by other suitable power; the linen or other fabrics to be washed are introduced at the door or opening L, together with the water and other detergent matters; the door L is then secured & the dasher set in motion. R R are the rollers for wringing or expressing the moisture from the articles washed; these rollers also serve the purpose of a mangle. T T are the tables for that purpose. The lower roller is mounted on a fixed bearing, and has motion communicated to it by the spur gearing Q, while the bearing of the upper one is free to rise and fall in the side frames. This bearing is separately represented at Figs. 6, 7, & 8—Fig. 6 being a plan of the bearing; Fig. 7, a plan of top part or cover; and Fig. 8, a vertical section of the bearing. This bearing consists of a hollow box; the hollow *b* receives the journal of the spindle of the upper rollers, while a block of India rubber J is placed in the capacity of the box. The cover or top 4 is placed within the box, and forced down on the block of India rubber by the screws O in the top of the frames. The pressure thus exerted is transmitted through a cushion of India rubber, and forces down the upper roller on the lower one with any pressure, regulated as required, but which is always somewhat elastic.

Specification, in pursuance of the conditions of the letters-patent, filed by the said Joseph Jessop in the great seal patent office on the 4th May, 1857.

To all to whom these presents shall come, I, Joseph Jessop, of Westgate, Bradford, in the county of York, send greeting:

Whereas her most Excellent Majesty Queen Vistoria, by her letters-patent, bearing date the 4th day of November, in the year of our Lord

1856, in the 20th year of her reign, did, for herself, her heirs, & successors, give and grant unto me, the said Joseph Jessop, her special license that I, the said Joseph Jessop, my executors, administrators, & assigns, or such others as I, the said Joseph Jessop, my executors, administrators, & assigns, should at any time agree with, and no others, from time to time, and at all times thereafter, during the term therein
142 expressed, should, and lawfully might make, use, exercise, and vend, within the United Kingdom of Great Britain and Ireland, the Channel Islands, and Isle of Man, an invention for "Improvements in machinery for washing, wringing, and mangling," upon the condition (amongst others) that I, the said Joseph Jessop, my executors or administrators, by an instrument in writing, under my, or their, or one of their hands and seals, should particularly describe and ascertain the nature of the said invention, and in what manner the same was to be performed, and cause the same to be filed in the great seal patent office within 6 calender months next, and immediately after the date of the said letters-patent:

Now, know ye that I, the said Joseph Jessop, do hereby declare the nature of my said invention, and in what manner the same is to be performed, to be particularly described & ascertained in & by the following statement, reference being had to the sheet of drawing hereunto annexed, and to the letters & figures marked thereon, (that is to say:) My improvements in machines for washing, wringing, & mangling are represented in the drawing hereunto annexed. Fig. 1 represents the machine in perspective, showing the front & one end; Fig. 2 represents a similar view, showing the back, with some of the gearing removed; while Figs. 3, 4, 5, 6, 7, & 8 show some of the parts detached.

E is the tub or barrel in which the washing operation is conducted; this tub is fixed between the end frames of the machine; it is shown separately, in longitudinal section at Fig. 4, and in transverse section at Fig. 5. It is furnished in the interior with a number of what I term rollers, being greater or less portions of or complete cylinders F F of wood or other suitable material; these rollers may either be fixed to the tub or cylinder or mounted on a skeleton drum, and may be caused or permitted to revolve within the tub E E. These rollers may also be each mounted on pivots at each end, on which they are free to revolve in the position represented in dotted circles in F F, Fig. 5.

C is what I term the dasher, separately represented in Fig. 3; it is fixed on the spindle passing through the centre of the tub, which is caused to revolve by means of the spur gearing G and winch handle U, or by other suitable power. The linen or other fabrics to be washed are introduced at the door or opening L, together with the water & other detergent matters; the door L is then secured, and the dasher put
143 in motion. R R are the rollers for wringing or expressing the moisture from the articles washed; these rollers also serve the purpose of a mangle. T T are the tables used for spreading & feeding the clothes between the rollers in performing this operation; theseshould be removed when performing the operation of wringing or squeezing to allow the water expressed to run back into the tub E, the lid L taking an inclined position, as at L^1, and forming a shoot or duct to conduct it back into the tub. The lower roller is mounted on fixed bearings, and has motion communicated to it by the spur gearing Q, while the earing of the upper one is free to rise & fall in the side frames. This be ring is separately represented at Figs. 6, 7, & 8. Fig. 6 is a plan of the bearing; Fig. 7, a plan of top part or cover; and Fig. 8, a vertical section of the bearing. This bearing consists of a hollow box, in the lower part of

which the bearing *b* is formed, which receives the journal of the spindle or shaft of the upper roller. A solid block or piece of India rubber J, separately represented, is placed in the capacity of the box on which the cover 4 rests. The cover or top 4 is placed within the box, and is forced down in the block of India rubber by the screws O O in the top of the frames. The pressure thus exerted is transmitted through a cushion of India rubber, and forces down the upper roller on the lower one with any pressure, regulated by the screws O O, as required, but which is always somewhat elastic. Fig. 9 represents a machine adapted for wringing & mangling only. The arrangement of the rollers & upper pressing bearing is the same; the construction of the framework is, however, somewhat different, and better suited for the wringing and mangling operations.

Having described the nature of my invention, and the manner of performing the same, I would have it understood that what I claim as my invention of improvements in washing, wringing, and mangling machines, and desire to protect by the hereinbefore in part recited letters-patent, is:

First, the arrangement & construction of washing apparatus, as hereinbefore described & represented in the annexed drawing.

And, secondly, the application of pressing springs, constructed and arranged as hereinbefore described, to the bearings of wringing & mangling machines.

144 In witness whereof I, the said Joseph Jessop, have hereunto set my hand & seal this 4th day of May, in the year of our Lord one thousand eight hundred and fifty-seven.

JOSEPH JESSOP. [L. S.]

(Witness:) W. CLARK, *Patent Agent*,
53 Chancery Lane, London.

A true copy: Attest—

C. W. TUTTLE.

145 UNITED STATES OF AMERICA,
District of Massachusetts, ss:

I, John G. Stetson, clerk of the circuit court of the United States within and for the first circuit and district of Massachusetts, hereby certify that the foregoing is a true copy of the record and of all proceedings in said cause in said circuit court determined.

In testimony whereof I hereunto subscribe my name and affix the seal of said court this twentieth day of November, A. D. 1869.

[SEAL.] JOHN G. STETSON, *Clerk.*

146

147 *Bond to party on appeal.*

Know all men by these presents that we, the Eureka Clothes Wringing Machine Company, as principal, and Samuel B. Rindge, of Cambridge, in the State and district of Massachusetts, and Isaac L. Kidder, of Newton, in said State and district, are held and firmly bound unto the Bailey Washing and Wringing Machine Company in the full and just sum of twelve thousand dollars, to be paid to the said Bailey Washing and Wringing Machine Company, its certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated the twelfth

day of November, in the year of our Lord one thousand eight hundred and sixty-nine.

Whereas lately, at a circuit court of the United States for the first circuit, within and for the district of Massachusetts, in a suit in equity depending in said court between the Bailey Washing and Wringing Machine Company, complainant, and the Eureka Clothes Wringing Machine Company et. al. respondents, decree was rendered against the said Eureka Clothes Wringing Machine Company; and the said Eureka Clothes Wringing Machine Company having obtained an appeal to remove the said cause to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said Bailey Washing and Wringing Machine Company, citing and admonishing it to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next:

Now, the condition of the above obligation is such, that if the said Eureka Clothes Wringing Machine Company shall prosecute its said appeal to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be null and void; otherwise to remain in full force and virtue.

SAMUEL B. RINDGE. [L. S.]
ISAAC L. KIDDER. [L. S.]

Signed, sealed, and delivered in presence of—
JOHN G. STETSON.

Approved:

JOHN LOWELL,
Associate Jus. Sup. Court of the U. S.

A true copy of the bond taken by the judge at the time of allowing the appeal named in said bond, which bond is on file in the office of the clerk of the circuit court of the United States for the first circuit and district of Massachusetts.

Attest:

JOHN G. STETSON,
Clerk U. S. C. C. Mass. Dist.

(Indorsement on cover:) No. 342. The Eureka Clothes Wringing Machine Company, appellant, vs. The Bailey Washing & Wringing Machine Company. Massachusetts C. C. U. S.

Filed 10th December, 1869.

Supreme Court of the United States.

DECEMBER TERM, 1870.

No. 139.

THE EUREKA CLOTHES WRINGING MACHINE CO.,

APPELLANT,

v.

THE BAILEY WASHING and WRINGING MACHINE CO.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES, DISTRICT OF MASSACHUSETTS.

ARGUMENT FOR APPELLANT.

BOSTON:
TOLMAN & WHITE, PRINTERS, 221 WASHINGTON STREET.
1871.

Supreme Court of the United States.

No. 139. DECEMBER TERM, 1870.

EUREKA CLOTHES WRINGING MACHINE CO.,

DEFENDANT AND APPELLANT,

v.

BAILEY WASHING AND WRINGING MACHINE CO.

Appeal from the Circuit Court of the United States, for the District of Massachusetts.

APPELLANT'S BRIEF.

This is a suit in Equity to compel the defendants to perform certain covenants contained in an indenture, executed in the name of the Bailey Washing and Wringing Machine Co., a body corporate under the laws of the State of Rhode Island, on the one part, and the Eureka Clothes Wringing Machine Co., a body corporate under the laws of the State of Massachusetts, on the other part.

The bill alleges, among other things, that the complainant is the owner of Letters Patent originally granted to John Allender, on the 11th day of January, 1859, for an improvement in wringing machines for the term of fourteen years; which were surrendered and reissued to Selden A. Bailey and others, on the 28th day of June, 1864, which were surrendered and reissued on the 8th day of Nov., 1864, and which were also surrendered and reissued on the 18th day of April, 1865.

That on the 24th day of March, 1866, the complainant and defendant corporations executed an indenture, by which the Bailey Washing and Wringing Machine Co. granted to the Eureka Clothes Wringing Machine Co. the right to use in the manufacture of wringing machines for sale, such parts of the invention secured in the last mentioned reissued patent as are represented in a sample machine referred to, and no others.

And the Eureka Clothes Wringing Machine Co. covenanted and agreed in consideration thereof to make returns monthly of the number of machines manufactured by it during the preceding month and to pay at the same time to the Bailey Washing and Wringing Machine Co. a tariff of fifty cents on each machine constructed during that time.

The answer denies that the defendant corporation executed or authorized any one in its behalf to execute that indenture, or that it deposited or authorized any one to deposit with the complainant a sample machine, and alleges that it has never made any machine containing any invention or improvement made by John Allender, or mentioned, described or claimed in any patent granted to him or to the complainant's assignors, or either of them; that the machines made by the defendant corporation are wholly unlike the machine or improvement described or claimed in any patent owned by the complainant, and are made under Letters Patent of the United States, granted to their assignors.

The Court dismissed the bill as against Samuel B. Rindge, one of the defendants, and decreed in favor of the complainant as against the defendant corporation, upon the ground that it had "made out as matter of fact that the indenture was made as alleged; and that it was immaterial whether the Exhibit D was the sample machine referred to in the indenture, because the evidence tended to show that a machine like that Exhibit was intended by the parties, and that the machine which the defendants made appeared to be identical with the machine referred to in the contract of the parties," and that it was not competent for the Court to enquire whether the machines made by the defendant corporation did contain or represent any part of any invention secured by the reissued patent relied on, as

the defendants were concluded by the *terms* of the indenture; and that the Court could not, in that proceeding, interfere to grant any relief in favor of the defendant on the ground of mistake, as such relief could only be allowed on a bill in equity filed for that purpose; and declined to examine and decide upon the evidence introduced in support of the answer, whether the machines manufactured by the defendant corporation did contain or represent any part of any invention secured to the complainant by the patent relied on, and ordered that the defendant corporation be enjoined as prayed for until payment be made of the sum adjudged to be due to the complainant.

From this decree the Eureka Company has duly appealed to this Court.

Conceding for the present that the indenture was duly executed and that the machines manufactured by the Eureka Company were like the alleged sample, the appellant respectfully submits that the Court erred in not dismissing the bill, for the reason that the machines manufactured by the defendant corporation did not contain any part of the invention made by John Allender, secured, or covered by the patent mentioned in the indenture.

It is true that by the *terms* of that indenture the Eureka Company agreed to pay fifty cents for each machine manufactured by it like the sample; but it is manifest that it was understood and believed by the party acting in the name of that Company when the instrument was signed, that the sample machine did "contain some parts of the invention secured in the said reissue," and that the Bailey Company did possess the exclusive right to make and use parts of the machines maufactured by the Eureka Company, and that the latter company could not lawfully continue to make that machine without the license or permission of the Bailey Company, and it cannot be disputed that these considerations were not only material to the contract and essential to its character, but were the efficient cause of its conception. The assumption that the Bailey Company was conferring, and the Eureka Company was receiving a valuable right was the only inducement to the covenants of that indenture on the part of the Eureka Company, and it was the *intention* to bind the Eureka

Company to pay *only* for such machines as it might make for sale, containing some part of Allender's invention, and the indenture should be so construed as to give effect to that intention if it can be done, but if it does not admit of such interpretation, and the covenant of the Eureka Company must be taken as a promise to account for and pay the tariff of fifty cents for every machine made by it, although they did not contain any part of Allender's invention, and if the machines manufactured by it did not in fact contain any part of the invention secured to the complainant by the reissued patent referred to, the contract would be avoidable and relievable in a Court of Equity on the ground of mistake.

And it is competent for the Court, whenever a party *comes before it*, to assert and enforce a claim under such an instrument, to conform the contract to the *real intent* of the parties.

In *King* v. *Hamilton*, 4 Peters, pp. 328–9, the Court says: "It is a settled rule to allow a defendant in a bill for a specific performance of a contract, to show that it is unreasonable, or unconscientious, or founded in mistake, or other circumstances leading satisfactorily to the conclusion that granting the prayer of the bill would be inequitable and unjust."

Even at law the contract may be avoided by a defendant on the ground of mistake. Mr. Parsons, in his Treatise on Contracts, fifth edition, vol. 2, p. 500, states the rule as follows: "If a contract is false to the actual meaning and purpose of the parties, or of either party, the remedy, if the plaintiff be the injured party, lies in assuming the contract to be void;" * * * "or if the defendant be injured, by defending against the contract, on the ground of fraud or mistake, if the facts support such a defence."

This suit is in the nature of a bill for "specific performance." The prayer is, that the defendant corporation be required to make returns and payment according to the covenants of the indenture, and it was and is vital to the *equity* of the complainant's demand that the machines made by the defendant, and the subject of its claim, should contain the invention, or parts of the invention made by John Allender, and secured by the patent; for it would be manifestly inequitable and unjust to compel the defendant to pay the complainant for per-

mission to exercise a privilege which it already possessed, and which the supposed grantor had no power to control.

And whether the stipulations of the indenture be construed in accordance with the intention of the parties, or, whether the contract, upon principles of equity, be conformed to effectuate that intention, it was and is material to enquire and determine whether the machines made by the defendant corporation, did contain any part of the invention secured to the complainant by the reissued patent.

Again, the complainant is seeking to enforce a promise. It is incumbent on it to show affirmatively that such promise is founded upon a *consideration*.

"A promise for which there is no consideration cannot be enforced at law."

"The rule was intended to protect parties from *mistake*, inadvertence or fraud."

Parsons on Contracts, Vol. 1, pp. 427, 428.

A consideration must be proved where the contract is in writing, as much as if the contract were oral only.

Parsons on Contracts, Vol. 1, p. 429.

An exception is made in favor of contracts under seal; but the "indenture" relied upon not being sealed with the official or corporate seal of the Eureka Company, is to be treated as a parol contract.

General Statutes of Massachusetts, Chap. 3, § 7, clause fifteen.

The consideration must have some real value.

Parsons on Contracts, Vol. 1, p. 436.

The only consideration to support the defendant's promise, is a "grant of a right to use, in the manufacture of wringing machines, for sale, such parts of the invention of John Allender, secured by the reissued patent, as are represented in defendant's machine, and no other." And in this view, also, it was material to enquire whether any parts of such invention were represented in that machine; for

if it did not contain any part of that invention, nothing passed by the grant, and there was no consideration for the promise.

If the defendant's machine, which is represented by Exhibit R, does not contain that invention, or, if the making of such machines is not a violation of any exclusive right, secured to the complainant by "the reissued patent," it is not entitled to any relief in equity against the defendant under that indenture.

It is *necessary*, therefore, to enquire and determine,—

The nature and extent of the invention. What is secured by the issued patent? Whether any parts of the invention are represented or contained in the machines made by the defendant?

The original patent, which was granted to John Allender, Jan. 11, 1859, was for an "Improved Roller for expressing water from clothes."

The invention is defined in the specification in such terms as to admit of no doubt as to its entire character. The inventor says: "I have invented a new and useful *roller* for squeezing water, &c., from cloth," &c.

"The nature of my invention consists in a *roller*, made of a spirally coiled spring, arranged on a shaft or roller made smallest in the middle, to allow the spring to yield; which spring is covered with India-rubber, or some flexible material that will yield or bend readily to the cloth, clothes, or other articles being squeezed."

And he describes and shows in the drawings what he calls "a pair of squeezers with *my* new rollers," which he describes again in these words: "The central roller I, being made smaller in the middle, allows the coiled spring cylinder to yield to the varying thickness of cloth or clothes passing between the rollers;" and adds, "I believe I have described and represented the yielding roller which I have invented." "I will now state what I desire to secure by Letters Patent."

And in further compliance with the statute, he particularly specifies and points out the part or improvement which he claims as his own invention or discovery, in these words: "I claim a *roller*, consisting

of a spirally coiled spring, arranged in a shaft, or roller made smallest in the middle (to allow the spring to yield), covered with India-rubber, or some flexible material that will yield or bend readily, as the spring yields to the cloth, clothes, or other articles being squeezed by the rollers."

He names it a *roller*, to be used in wringing machines; he describes minutely and fully the features which constitute it his invention—its form, the materials composing it, and the mode of constructing it. These he claims as essential to its identity, "a spirally coiled spring, arranged on a peculiarly formed shaft, &c., *covered* with India-rubber, or some flexible material," &c. And as no one could know better than he, the nature and extent of that invention, or what that roller contained, which distinguished it from all others, his statement of it should be conclusive upon the subject; more especially as *he* has never said that that statement did not correctly describe or define his invention. He obtained his patent in January, 1859, and made and sold wringing machines under it, like the machine which he describes in his specification, and shows in his drawings, until the time of his death, in 1863; but he never pretended that any part of that machine but the "roller" used in it was invented by him.

In May, 1863, Mr. Allender died, and the patent was assigned by his Executors to Selden A. Bailey, now one of the principal stockholders of the complainant corporation, for the sum of seven hundred and fifty dollars, on the 16th of October, 1863, (p. 49); and immediately thereafter a series of verbal expansions of the claim, were commenced and carried on, culminating on the 18th of April, 1865, after three surrenders and reissues, in the *six* claims of the patent, — the foundation of this suit, — with the title of an "Improved Wringing Machine;" by which the complainant is attempting to exact tribute from every wringing machine made in this country, amounting to hundreds of thousands of dollars.

The *description of the invention*, in the several mutations of the patent, necessarily remained unchanged. In the specification of the present patent (p. 47) it is recited, that "John Allender did invent a new and useful *roller*." "Figure 1 is a pair of squeezers with

said *new rollers*." "The nature of the invention consists in a *roller* made of a spirally coiled spring, arranged on a shaft or roller, made smallest in the middle, to allow the spring to yield, which spring is covered with India-rubber, or some flexible material, that will yield or bend readily to the cloth," &c.

"The rollers (D, D,) consist of a shaft or central roller, (I,) made smaller in the middle, as shown in Figure 3."

"The shaft is surrounded by a flat metal spring, coiled spirally, so as to form a cylinder (J,) of a uniform diameter from end to end, as shown in Figure 3."

"Around this spring cylinder (J,) there is a cylindrical covering (D,) made of India-rubber, or some flexible material that will yield or bend readily, as the spring cylinder inside of it yields to the pressure of the cloth or clothes passing between the rollers."

"This India-rubber covering is surrounded with a thin hoop (K,) at each end, and is pierced by several spurs, (L, L,) on the gears, (M, M,) which are firmly fastened to the shaft, (I,) to make both the rollers turn together, as the cloth or clothes being squeezed passes between them, and the water squeezed from the cloth runs from the under roller, between the boards, (G, G,) on to the base, (A,) and through the spout, (N,) away from the machine."

"The central roller (E,) being made smaller in the middle, allowed the coiled spring cylinder to yield to the varying thickness of the cloth or clothes passing between the rollers."

"We believe that we have described and represented the yielding *roller*, which said Allender *invented*, so as to enable any person skilled in the art to make and use it."

The claims are six in number, and as follows:

First. "A roller made of a spirally coiled spring, arranged on a shaft, or roller, made smaller at the centre than at the ends, as, and for the purposes specified."

Second. A roller so constructed as to yield more at its centre than at or near its ends, covered with vulcanized rubber or any other elastic compound impervious to water, substantially as and for the purpose set forth.

Third. Cog-wheels in combination with rollers of vulcanized

rubber or any other elastic substances or compound impervious to water, for the purpose set forth.

Fourth. Rollers made of or covered with vulcanized rubber or any other elastic substance or compound impervious to water, when used in combination with cog-wheels, and a spring or springs around the shaft of the roller, for the purpose set forth.

Fifth. Rollers for washing or wringing machines, made of, or covered with vulcanized rubber, or any other elastic substance or compound impervious to water, when used in combination with adjusting spring or springs.

Sixth. Rollers for washing or wringing machines, made of, or covered with vulcanized rubber, or any other elastic substance or compound impervious to water, when used in combination with adjusting spring or springs, and screw or screws to adjust the pressure to the springs and rollers."

Now it is immaterial whether the invention be claimed as a "new or improved roller for wringing machines" or, whether it be claimed as a combination of such improved roller with each or any of the several constituent parts of the wringing machine in which it may be used. The difference between these two methods of defining the invention is nominal only.

The invention consists, in fact, in the substitution of such improved roller for the old one, in the machine to which it is applied.

There is nothing in the mode of attaching this peculiar kind of roller to the other parts of the wringing machine ; or in the act of substituting it for the old one in any machine that can be properly said to be an *invention*.

There is no *combination* made in any technical sense of that term. The new roller merely takes the place of the former one in the machine, and its relation to all the other parts is the same as that of the one it supersedes, and with reference to the other parts it may more properly be said to sustain relations of *juxtaposition*, and in that sense and in no other may they be called combinations.

The "pair of squeezers" described in the specification of the patent, and shown in the drawing as the machine to which the new

and improved roller was applied, was not new, nor did Allender claim that it was new; on the contrary, that idea is excluded by *his* own *statement* of his invention. It is substantially like, and the description of it is almost identical with, that of the wringing machine described in the English patent of Joseph Jessop, dated Nov. 4, 1856, for "Washing, Wringing and Mangling Machines," (pp. 141–143,) to wit: "R R, are the rollers for wringing or expressing the moisture from the articles washed." "The lower roller is mounted on a fixed bearing, and has motion communicated to it by the spur gearing (Q,) while the bearing of the one is free to rise and fall in the side-frames. This bearing is separately represented at Figs. 6, 7 and 8, — Fig. 6 being a plan of the bearing; Fig. 7 a plan of top part, or cover; and Fig. 8 a vertical section of the bearing. This bearing consists of a hollow box; the hollow (B,) receives the journal of the spindle of the upper roller, while a block of India-rubber, (J,) is placed in the capacity of the box. The cover, or top 4, is placed within the box, and forced down on the block of India-rubber by the screws (O,) in the top of the frames. The pressure thus exerted is transmitted through a cushion of India-rubber, and forces down the upper roller on the lower one, with any pressure, regulated as required, but which is always somewhat elastic."

And the summing up may be, without introducing anything not in the specification, as follows:

First. Cog-wheels, in combination with rollers, for the purposes set forth.

Second. Rollers, in combination with cog-wheels and springs, for the purpose set forth.

Third. Rollers for washing or wringing machines, in combination with adjusting springs.

Fourth. Rollers for washing or wringing machines, in combination with adjusting springs and screws, to adjust the pressure to the springs and rollers.

So far as the relations of the rollers with the different parts of the wringing machine may be considered as "combinations," they are identical in both of these patents, and all the corresponding parts in the two machines are in construction, arrangement, and mode of op-

eration, almost precisely alike. They differ only in the construction of the rollers; even the gearing, by which they are moved together, being of the same peculiar kind, called "spur." It cannot reasonably be doubted that John Allender was well acquainted with Jessop's patent and machine when he made his new roller, and that he contemplated his invention as an improvement on the roller of that machine, and nothing more.

And in whatever terms the claims of the reissued patent be expressed, it can secure no more to the complainant than the right to make and use, and sell to others to be used, *rollers* for wringing machines, substantially like that described in the patent.

The first claim of the "reissued patent" is in exact accordance with the invention; but that cannot be said of either of the others.

The second claims *all* rollers covered with vulcanized rubber, so constructed as to yield more at its centre than at or near its ends.

The third, *all* rollers *made* of vulcanized rubber, or any other elastic substance or compound, impervious to water, in combination with cog-wheels.

The fourth, *all* rollers made of, or covered with vulcanized rubber, or any other elastic substance, or compound, impervious to water, when used in combination with cog-wheels and a spring or springs around the shaft of the roller.

The fifth, *all* rollers for washing or wringing machines *made* of, or covered with *any* elastic substance or compound impervious to water, when used in combination with an adjusting spring or springs.

The sixth, *all* rollers for washing or wringing machines made of, or covered with *any* elastic substance or compound impervious to water, when used in combination with an adjusting spring or springs, and screw or screws, to adjust the pressure to the springs and rollers.

Now, if the *words* used in these claims are to be applied without reference to the *things* described in the specification, the claims comprehend what was never even thought of by the inventor.

The idea that a roller *can be made* of *any* elastic substance impervious to water, is nowhere in the specification, suggested or intimated; and unless the specification substantially describes such a

roller, and the mode or manner by which it can be produced, or that such a roller is substantially like the roller described, differing from it only in colorable variations, there is more claimed than described, and the patent does not, and cannot lawfully cover it.

The question is, therefore, whether the roller in Exhibit D and R, —the machines manufactured by the defendant corporation—is substantially like the roller invented by Allender, and covered by the reissued patent.

That it is wholly unlike that invention—it is respectfully submitted—is apparent upon inspection, and without comment.

The complainant's experts, on the cross-examination, admit that there are essential differences in the principles of the mechanical *construction* of the rollers; although they accompany that admission with voluntary opinions as to the mode of operation of the machine, as a whole, in which they are shown.

Mr. Hibbard says, in answer to cross-interrogatories 6, 7, 8, p. 41, that "they do differ in principle, as to the mode of constructing an elastic roller."

Mr. Waters, in the *direct* examination, p. 45, answer to interrogatory 6, says—in reference to Exhibit R, the defendant's machine—"it differs from the machine described in the patent in several particulars. The first is, the rollers, as I understand the machine, have not the internal arrangement referred to in the first claim of the patent." * * * "In consequence of this difference of internal arrangement, they also differ from the patented machine, as to their capability of yielding more at the centre than at the ends; but these differences do not change the *mode of operation of the machine*," &c.

On cross-examination, when asked, "If you should direct a mechanic to build for you a wringing machine substantially like Exhibit R, (the defendant's machine) and he should bring you a machine like the Exhibit marked 'Allender Machine,' (the machine described in the patent) would you consider that he had complied with your order or direction," answered, "I would not,"—a practical test of the identity even of their modes of operation.

Mr. Treadwell, well known to the Court as a scientific engineer and mechanical expert, who testified on this point on behalf of the defendant, says: (p. 76, answer to cross-int. 384.)

"In my opinion the machine marked R, is substantially different in construction and operation from the machine described in said Allender patent. My reasons for this opinion are as follows: Aside from the difference between the two machines, which arises from the fact that the machine, Exhibit R, is a portable machine, in the sense of requiring to be fixed to some point of support by means of a clamp attached to it, whereas the Allender machine is a complete machine, provided with a supporting frame. The machine, Exhibit R, differs substantially from said Allender machine, because the rollers of Exhibit R are substantially different from the rollers of said Allender machine, and the combining mechanism, whereby the rollers in Exhibit R are supported and held together, differs substantially from the combining mechanism whereby the rollers of said Allender machine are combined and held together.

"In the said Allender machine, as described in said reissued patent, the rollers are made of a spirally coiled spring, arranged on a shaft or roller, made smaller at the centre than at the ends, in order that the same rollers may have greater elasticity in the middle than at the ends.

"In Exhibit R, I find no such construction. I am not able to examine the interior of the rollers in Exhibit R, but assume, from my general knowledge of the construction of such rollers, that they consist of a roller of vulcanized India-rubber forced upon a spindle or shaft, of equal diameter throughout; and that the shaft is not made smaller at the centre than at the ends, and has no spiral spring arranged upon it, for the purpose of giving greater elasticity at the centre than at the ends of the rollers. And so far as I can ascertain by applying pressure to the rollers of Exhibit R, the elasticity is not greater at the middle than at the ends of the rollers, but, on the contrary, appears to be equal. Therefore, I find that the rollers of Exhibit R contain neither the construction of the rollers described in said Allender patent, nor the capacity of said rollers. In the said Allender reissue, the rollers constructed with a spirally coiled spring, arranged on a shaft or roller, made smaller at the centre than at the ends, so as to yield more at their centres than at or near their ends, are described as being covered with vulcanized rubber or other elastic compound, impervious to water.

In Exhibit R, I do not find any rollers so constructed, or substantially so constructed and covered with vulcanized rubber, for the reasons I have before given. In point of fact there is not even a covering of vulcanized rubber upon the rollers of Exhibit R, substantially such as the covering applied to the rollers of the Allender machine. There is a wide practical difference, well recognized by mechanics, between the covering of a roller and a roller itself. Rollers are well-known mechanical devices; they are cylinders of wood or iron, or other material, provided with gudgeons or shafts, the general practice being to make the roller of the diameter required, bore a hole in the axis of it, and drive it on a shaft, the shaft projecting beyond the roller at its ends, for the purpose of affording bearings and means of attaching mechanical devices to rotate the rollers. Such rollers have been, from time to time, covered with a clothing of leather, linen or woollen cloth, and when used in carding engines, with leather, armed with wire carding-teeth.

It has never been the practice among mechanics, to my knowledge, to confound the roller itself with the covering; and I have never heard of a shaft being covered with wood, as a form of description of a wooden roller, with a shaft of iron or other material. Now, in the machine, Exhibit R, the rollers themselves are cylindrical masses of vulcanized rubber, having a hole through their axis which receives the shaft, and do not differ in any respect, except in material or substance of which they are made, from an ordinary wooden or iron roller; and the difference between their capacity and that of wooden or iron rollers, is due to the difference in the properties of the materials of which they are composed. Therefore, in my opinion, when the roller itself is composed of India-rubber, it cannot be said to have a covering of India-rubber. If these rollers in Exhibit R were to have, besides the shaft or spindle, a roller of wood or iron, and a covering of vulcanized India-rubber, the covering of the proportionate thickness shown in the drawing of said Allender reissue, they would be of little or no practical use as wringing machine rollers, as there would not be a sufficient mass or thickness of vulcanized India-rubber to properly conform to the figure of the hard articles which accompany the clothes passed between the rolls, un-

less some provision were made similar to that in the rolls of the Allender machine, to give additional elasticity to the rollers; and these rollers in Exhibit R, are too small to practically embody such provision. In the rollers of the Allender machine, the requisite elasticity of surface is obtained by the combined action of the India-rubber covering, the spiral spring surface of the inner roller, and the peculiar shaped shaft. In the rollers of Exhibit R, the required elasticity of surface is obtained by the use of the material, India-rubber for the roller itself. I consider it is as substantive an idea, embodying a new principle in wringing machines, to use India rubber, as material for the entire roller, as to use a rubber covering; because, where the roller itself is entirely made of India-rubber, it may be of very much smaller size than a practical roller which has a covering of India-rubber, and yet operate equally as well, if not better. For instance, the rubber which might form the covering of one roller might be cast in the form of a roller of smaller size, and used, in connection with a shaft, with greater efficiency than as before used with a roller; because there would always be a greater thickness of rubber at the point of pressure upon the clothes, the same amount of rubber being used in both cases. The greater efficiency following the dispensing with the hard roller, and the making of the former covering into the roller itself shows, in my opinion, that kind of departure from established former usage which constitutes substantial novelty. The change not being that of mere improvement, but of substantial difference in construction and mode of operation."

No attempt whatever was made on the cross-examination to controvert the correctness of the opinion expressed by Mr. Treadwell in relation to the difference of principle and construction between the rollers of these machines.

Mr. Baldwin's testimony, pp. 69 to 74, is to the same effect.

It cannot seriously be contended that there is not a wide and essential difference between the rollers of these respective machines *as devices* for performing the required functions. And the claim will be, that inasmuch as they are both *elastic* rollers, and perform the same functions in each machine, the machines are, therefore,

as wholes, or in the so-called combinations of their parts, substantially alike, notwithstanding there exists essential differences of construction, &c., between them. The evidence shows the contrary. The opinions of the complainant's experts are given upon an assumption or erroneous idea of the construction of the patent, and an artificial classification of the devices or constituent parts of the machine. Comparing the functions they perform in the several machines—entirely disregarding specific differences, the gist of the inquiry—they conclude that they are "substantially the same."

Mr. Treadwell, in his analysis and comparison of the parts of the machines considered as "combinations," in his answer to int. 4, on pp. 76–79, exposes the fallacy underlying these opinions. But it is not necessary to pursue this subject further; if this position were tenable it would render the patent void. To give either of the claims, except those which relate to the construction and characteristics of the rollers, as devices or instrumentalities, the broad interpretation contended for, would, in view of the state of the art at the time of the invention, make it the duty of the Court to declare the patent void.

Wringing machines in all respects like the machine described in the Allender patent, except in the peculiar characteristics of the roller shown in that patent, were in public use and described in the Letters Patent granted to Joseph Jessop, before mentioned (p. 93). In that machine the construction and arrangement of the several parts or devices, the functions they performed, and the mode of operation,—except so far as the latter was affected by differences in the construction of the roller,—were precisely like the machine described.

Mr Hibbard, one of the complainant's experts, on his cross-examination upon this subject (p. 42,) gives as the only reason for saying that he finds "that the machine represented in the Jessop patent is unlike the machine represented in the Allender patent," that it has no elastic rollers for squeezing the clothes, "but instead thereof hard rollers," * * * that "the rollers have no capacity for adapting themselves to the surface of the clothes. In their operation they appear to be a *pair of common squeezing rollers*." And that is precisely what Allender called the machine in which he shows the appli-

cation of his "*new rollers*," and now claimed to be a part of his invention.

Mr. Treadwell says, in answer to interrogatory 5, p. 79—"I have examined said patent, (Jessops) and understand the construction and operation of the wringing machine therein described. I find that the said wringing machine described in the said Jessop patent, is substantially the same in all respects, in construction and mode of operation, as the machine described in said Allender reissued patent, excepting the mode of construction of the rollers, and the materials of which the rollers are composed. Said Jessop patent describes a wringing machine which has squeezing rollers of wood, placed upon proper shafts, and supported by side-frames, in which are boxes, *adjusting springs and adjusting screws*, substantially like the arrangement in the Allender patent. The spring described in the Jessop patent is a cylinder, or a chunk of rubber, which is the common substitute for spiral springs, such as are shown and described as adjusting springs in the said Allender reissue," &c. "The action of the adjusting screw in both cases being the same upon the adjusting spring."

The elastic roller, or roller made like the roller of Exhibit R and D, (the defendant's machine) that is, made of vulcanized India-rubber or other elastic material, as a substitute for the non-elastic roller in wringing machines, was invented by Wm. Scott Underhill, and a patent was granted to him therefor by the British Government, in 1857. The provisional specification (p. 91) was filed on the twenty-fifth of May, 1857. It is entitled "Certain Improvements in Wringing Machines," described as follows:—"This invention consists in making the rollers used in the above named machines, of vulcanized India-rubber, or other elastic material, either solely or in conjunction with, wood or metal rollers, so that the elastic material will admit of buttons, or other similar attachments to clothing, passing through without injury, whilst at the same time the pressure is sufficiently great to force out the water and render the articles comparatively dry."

The patent was sealed the twentieth of November, 1857, and the

invention is described in the extended specification, as follows:—

"This invention has reference to that portion of the machines known as wringing machines, termed the rollers. These rollers are usually made of wood, or other non-elastic material, and as all the articles which have been washed or saturated have to pass between these rollers, in order that the water may be squeezed out of them, it is often from the extreme rigidity of the wood rollers, or rollers formed of non-elastic material, that buttons are broken and torn from garments, and that delicate articles are liable to considerable damage.

"My improvements consist in making the rollers used in such machines, of vulcanized India-rubber or other elastic or resilient material, and I propose to employ for this purpose one or more of such rollers. When one is used, it will, of course, be in conjunction with ordinary wood or metal, or other hard and non-elastic rollers, but all the rollers in the machine may, if preferred, be covered with elastic or resilient material, so that they will admit the passage of the clothes or other articles between them, pressing them sufficiently for the purpose of wringing out the water, but without injuring the articles by breaking or tearing off buttons, or otherwise damaging them. In making these rollers, I prefer the following mode of construction: a number of stout, vulcanized, India-rubber rings are placed upon a spindle, and fastened at either end by screws, or the equivalents thereof, which will keep them always in position; the usual adjusting screws being retained to regulate the horizontal position of the rollers; or the rollers may be made by fixing a tube of India-rubber, of sufficient thickness, upon a spindle, though the mode first described will probably be found the best in practice. The India-rubber, possessing so great resiliency, acts as a cushion, and prevents the garment or other articles under operation, from being too harshly pressed, and if only one such roller be employed, working in conjunction with others of wood, metal or other non-elastic material, the pressure between the two will not be nearly so severe as with two non-elastic rollers; whilst at the same time it will be found sufficient for the purpose.

"Other elastic or resilient material, such as a compound of India-rubber with fibrous or woven material, may also be used for making or covering these rollers.

"Having thus described the nature of my said invention, and in what manner the same is to be performed, I claim the improvements in wringing machines, by making one or more of the rollers used in such machines, of vulcanized India-rubber or other elastic or resilient material, or covering such rollers with elastic or resilient material, as herein more fully set forth and specified."

Here we find a complete description of the roller of the defendant's machine, and the manner of making it. "The roller may be made by fixing a tube of India-rubber, of sufficient thickness, upon a spindle."

It must be of sufficient thickness, that is, according to the specification, so thick that "the resiliency of the rubber shall act as a cushion," and "admit of buttons or other similar attachments to clothing passing through without injury;" and it must be "*fixed*" upon the spindle that is "made fast"—"firm"—according to the definition of that term by Worcester and other lexicographers. There is no pretext for saying that a "workman is not told that the cover should be fastened on the shaft and not be loose,"—nor can there be any question that a workman can, by merely following the directions of that specification, produce a roller made of, or covered with, vulcanized rubber, or any other elastic substance which can be successfully used as rollers, "in that portion of the machines, known as wringing machines." The directions for making and applying the roller are full, clear and exact. Underhill does not claim to have invented a wringing machine. They are referred to by him as things well known; he claims only to have invented an *improvement* in the *rollers* of that machine, and he shows how it is to be applied. "The usual adjusting screws being retained to regulate the horizontal position of the rollers," and of necessity the *springs* which are their inseparable accompaniments. The term *adjusting screw*, implies its concomitant—the spring—and it is entirely gratuitous to say, "he relies on *set* screws to adjust with." It is impossible to conceive that a wringing machine with wooden or other non-elastic rollers, could be operated without the use of a spring, to give flexibility to their action. It is so improbable that it will not be presumed. There

is nothing then in the wringing machine or "pair of common squeezers"—as Allender and Mr. Hibbard call it—having rollers *made* of vulcanized rubber, instead of wood, but what Mr. Underhill invented and directed to be put there,—1. Rollers having every one of the features and properties of the "roller" embraced in the combinations claimed in the complainant's patent; and if "a cylindrical covering of India-rubber, or other flexible material," the words of that patent, imports *imperviousness to water—a fortiori* does "a tube of vulcanized rubber fixed upon a spindle," and Underhill was the first to introduce it. 2. The combinations of rollers and springs. 3. The combinations of rollers, springs and screws.

It is evident that upon applying this roller, constructed in either of the methods described by the patentee, to the wringing machines then in use, according to the directions in this patent, that is, in place of the wooden rollers—rollers made of, or covered with, vulcanized rubber as described in the patent, it would contain, as Mr. Treadwell testifies, (pp. 80, 81,) "a combination of rollers for washing or wringing machines, made of, or covered with vulcanized rubber, and an adjusting spring or springs substantially as described in said Allender reissue; and would also contain rollers for washing or wringing machines, made of, or covered with, vulcanized rubber, used in combination with adjusting spring or springs, and screw or screws, to adjust the pressure to the spring or rollers; unless one of the elements in both of said combinations, namely, the rollers, be limited to such rollers as are specially described in said Allender reissue, viz.: rollers made of a spirally coiled spring, arranged on a shaft, or roller, made smaller at the centre than at the ends; and as I do not find any other kind of rollers described or suggested in said Allender reissue, I consider the above-mentioned combination limited to that special kind of rollers, or their equivalents," &c.

If the Court shall restrict the claims of the reissued patent to the roller described in the specification, and its so-called combinations, it does not secure to the complainant the right to any part of the defendant's machine, because it is substantially different from the invention.

If the claims be construed to cover *all* wringing machine rollers,

made of, or covered with, vulcanized rubber, or other elastic material, as substantially within the description of the patent, it does not secure to the complainant any right to any part of the defendant's machine, because it would be void for want of novelty, and also because it would be manifestly for more than the patentee had invented; and, in that case, it would come clearly within the animadversions of the Court in the case of Burr *v.* Duryea, 1 Wal. Mr. Justice Grier, in delivering the opinion of the Court, (p. 587) says:—"Since the date of this Act, not only the Patent Office, but the bar, can furnish gentlemen fully competent to the task of drawing up proper specifications, and but little liable to commit blunders from inadvertency. Specifications now seldom issue from the Patent Office to which such an imputation can be made; nevertheless, this privilege of surrender and reissue is resorted to more frequently than ever. Formerly, when in course of investigation in a court of justice, it was discovered that a patent was invalid for any of the reasons mentioned in the Act, it was resorted to for protection. *Now*, after a patent has been declared to be valid, the specification without defect, and the claim for nothing more than the invention, after it has undergone examination for many years, the assignees come forward and make oath that the inventor's original patent is 'unavailable,' for some purpose unnecessary to be divulged.

"In the present case the purpose is transparent." "By the use of general and abstract terms the specification is made so elastic that it may be construed to claim only the machine, [the roller] or so expanded as to include all previous or future inventions for the same purpose.

"The surrender of valid patents, and the granting of reissued patents thereon, with expanded or equivocal claims, where the original was clearly neither 'inoperative nor invalid,' and whose specification is neither 'defective nor insufficient,' is a great abuse of the privilege granted by the Statute, and productive of great injury to the public. This privilege was not given to the patentee or his assignee in order that the patent may be rendered more elastic or expansive, and therefore more '*available*' for the suppression of all other inventions."

During the whole time Allender was making and selling wringing machines under his patent, Mr. Bailey, the principal actor in these proceedings, and one of the body corporate complainant, into which the speculators in this patent have been, by the laws of Rhode Island transformed, was carrying on business, making and selling wringing machines in the same place, and in competition with Mr. Allender, without any interference on his part. Now, if his invention had embraced *all* wringing machines with rubber rollers, is it to be supposed that he would have submitted in silence to that interference with his rights? Nor can it be supposed that the executor, his own brother, had any idea that such a claim could be sustained, or, he would not have sold the patent for a few hundred dollars.

Mr. Bailey well knew when he applied for the reissues of that patent, the actual extent of Allender's invention; and it was only by slight gradations that he dared to approach the broad claim, by which it is now attempted to cover every wringing machine in the country. The claims of the several reissued patents are as follows:

June 28, 1864, Exhibit 7.

First. A roller so constructed as to yield more at its centre than at or near its ends, in combination with a covering of vulcanized rubber of tubular form, as and for the purpose set forth.

Second. Cog-wheels, in combination with elastic rollers, constructed and used substantially as set forth.

Nov. 8, 1864, Exhibit 8.

First. A roller so constructed as to yield more at its centre than at or near its ends, in combination with a covering of vulcanized rubber of tubular form, as and for the purpose set forth.

Second. Cog-wheels, in combination with vulcanized rubber rollers, or any other elastic substance or compounds, impervious to water.

The doctrine of *caveat emptor* does not apply to a case like this. It is not true that every body whose rights are liable to be affected by this patent, knows that "*the claim is not intended [or can be allowed] to aid the description, but to ascertain the extent of what is claimed as new.*"

Curtis on Patents, §227.

The claim to *all* rollers in combination with the other parts of wringing machines, is calculated to deceive even those who sometimes have the courage to resist the extortions so often practiced by means of fraudulent patents, and in this case the generality of the words of the claim, gave color to the pretensions of Bailey, in the dragooning process by which the treasurer of the Eureka Company was forced into the signing of the indenture.

If the defendant's machine is not covered by the reissued patent, the complainant is not, in equity, entitled to any relief against the defendants, either as to the payment of money, or, more especially, the injunction prayed for.

A Court of Equity will never enjoin a party from doing that which he has a legal right to do, notwithstanding he may have failed to keep covenants improvidently made concerning it.

The equitable relief contended for by the defendant appellant will not be refused, unless the Court apply to this case stringent rules of pleading and of practice; for it will not be disputed, that if the Bailey Company had no legal right, under their patent, to interfere with the business of the Eureka Company, as manufacturers of the machines made and sold by it, and that the indenture could secure to the Eureka Company no privilege it did not already possess, in common with the public, the promises made by that Company to pay to the Bailey Company thousands of dollars on account of such a suppositious right, would be without consideration, and unsupported by the slightest obligation, either of conscience, equity or law.

And if the complainant be held to the ordinary rules of evidence, relating to the nature and degree of proof necessary to support an issue, the bill should be dismissed, because he has failed to establish either of the averments essential to the maintaining of his suit.

Giving the complainant all the latitude claimed for the indenture, the burthen is on it to prove,—

First. That the indenture relied upon was executed by a duly authorized agent of the Eureka Company, or that it was subsequently ratified and adopted by the Company.

Second. That the wringing machines made by the Eureka Company were like the sample referred to in the indenture.

The complainant has produced a machine, marked D, as the sample machine, but there is no evidence—certainly no proof—that this machine was deposited with, or delivered to, the Bailey Washing and Wringing Machine Company, by the Eureka Company, or by any one connected with that Company, or by any one, as and for "the sample machine" of the indenture.

The only testimony relating to it is, that it came to the complainant's factory at some time, but how or from whom, no one pretends to say.

Depo. S. A. Bailey, p. 21, int. 8, and ans.
I. P. Whipple, p. 30, int. 15 and 16, and ans.

Mr. Alexander, (p. 59,) the agent of the Eureka Company, Mr. Rindge, (p. 61,) and Mr. Tower, (p. 75,) one of the Directors, say, that no such machine, nor any other machine, was ever sent to the Bailey Company by the Eureka Company, as the sample contemplated by the agreement. The Company very soon after the signing of the indenture, discovered the imposition practiced upon it, and refused to ratify the act of their treasurer.

The sample machine mentioned in the indenture, according to the recitals concerning it, contained marks put upon it to prove its identity, — marks descriptive of that which is legally essential to the claim,—but the Court dispensed with that proof. Exhibit D does not contain those marks. The marks on the rollers of that machine do not correspond with those called for by the indenture.

The Court did not, and could not find, upon the evidence, that Exhibit D *was* the identical sample machine meant by the indenture, and it was only by invoking the principle of liberal construction to carry out the intention of the parties, that the complainant could insist, and the Court hold that it was "not material that Exhibit D was the sample machine referred to in the indenture, because the evidence tends to show that a machine like the Exhibit was intended by the parties."

Now if "intention" is to prevail over technical rules in the one case, why not in the other?

The indenture is not binding on the defendant corporation because it was not executed by an authorized agent or officer of the Company.

Depo. S. B. Rindge, pp. 61, 62.
T. J. Alexander, pp. 60, 61.
L. L. Tower, pp. 74, 75.

It was distinctly stated by the Treasurer, at the time the indenture was signed, "so that there could be no misunderstanding in relation to it," that he had no authority to execute the papers, although he thought said agreement would be carried out by them.

Depo. S. B. Rindge, pp. 61, 62.
T. J. Alexander, pp. 60, 61.
L. L Tower, pp. 74, 75.

It was never ratified or carried out by the Company.

Depo. S. B. Rindge, p. 67, cross-int. 61, and ans.

But if the Court shall determine that the reissued patent is valid to secure to the complainant the exclusive right to the use of said rollers for wringing machines made of vulcanized rubber, as well as those described in the patent, or that the patent is not void upon either of the grounds taken by the defendants, we do not propose to insist upon the last two points discussed. It was the avowed intention of the gentlemen acting for the Company, when that instrument was signed, to recognize all *valid* claims of the complainant under that patent, (Depo. of L. L. Tower, p. 74, ans. to int. 8,) and if the Company have used in the construction of their machines any invention, — judicially determined to be such, — made by John Allender, and secured by that patent, that Company is ready and willing to pay for it; but if the Court shall decline to pass upon that matter, upon the ground that the defendant is precluded from the benefit of any equitable defence in the present case, then the defendants ask the advantage of all technical defences that may be open to them.

The grounds relied upon by the complainant to prevent any enquiry into the scope, effect, or validity of the reissued patent, are:

1st. That the defendant, by the principles of equity, is not per-

mitted to deny the title of the complainant, and that the recitals in the agreement, amount to an admission of title in the complainant, viz. :—

1. That the complainant is the legal owner of the reissue.

2. That the defendant will not violate or infringe upon the reissued patent.

We do not dispute that the complainants are legal owners of that patent; nor do we dispute that the reissued patent is valid to secure the invention made by John Allender, if the meaning of the words used in the claim be restricted by the descriptive portions of the specification to the things they cover.

It is difficult to see in the recitals, "that the Bailey Company grants and conveys to the Eureka Company a right to use, in the manufacture of wringing machines, such parts of the invention secured by the patent, as are represented in a sample, and no other;" and that "the Eureka Company promises to pay royalty on every such machine it shall make," an admission which shall estop that Company from showing that no part of the invention, secured by that patent, is represented or contained in that sample, or from showing that the patent is void.

We respectfully submit that the Court will not expect us to discuss the doctrine of estoppel on such a state of facts. If no part of the invention is represented in that sample, the Eureka Company was either mistaken or cheated,—which party ought to be estopped? The remarks of the Judges, in *Hayne, et al.*, v. *Maltby*, 1 Term Reports, 438, apply with peculiar force to the facts of this case. *Kenyon, C. J.*, says: "The plaintiffs, pretending to derive a right "under a patent, assign to the defendant part of that right on cer- "tain terms, and notwithstanding the facts now disclosed show that "they have no such privilege, they still insist that the defendant "shall be bound by his covenant, though the consideration of it is "fraudulent and void. This is not to be considered as a covenant "to pay a certain sum, in gross, at all events, but to use a machine "in a particular way, in consideration of the plaintiffs having con- "ferred that interest on the defendants, which they profess to con- "fer by the agreement."

"Now, in point of conscience, it is impossible that two persons "can entertain different ideas upon the subject. But, it is said, "" though conscience fails, the defendant is estopped, in point of law, "from saying that the plaintiffs had no privilege to confer. "*But "the doctrine of estoppel is not applicable here.*" * * * "Who is es- "topped?—The person supposed to be estopped is the very person "who has been cheated and imposed upon."

Ashurst, J. "This is a good plea, and the defendant is not estopped "from disclosing any of the matters contained in it." * * * "The "plaintiffs use this patent as a fraud on all mankind; they state it "to be an invention of the patentee, when, in truth, it is no inven- "tion of his. The only right conferred on the defendant by the "agreement, was that of using this machinery, which was no more "than he, in common with every subject, had without any grant "from the plaintiff."

Buller, J. "The plaintiff had no exclusive right, and, therefore, "the defendant had not the consideration for which he entered into "that covenant"—all the Judges agreeing that the law of estoppel did not apply to the case—and there is no reason why it should not be the law of the present day.

2d. The complainant also objects to any evidence affecting the scope and validity of the reissued patent, "because it is not respon- sive to any issue in the cause."

The bill alleges that Letters Patent were originally granted to John Allender, "for improvements on an improved wringing machine;" that said patent was surrendered for good and lawful cause to the Commissioner of Patents, and new Letters Patent obtained on the 28th day of June, 1864, for the same invention; that these Letters Patent were for good and lawful cause surrendered, and new Letters Patent obtained on the 8th day of November, 1864, for the same in- vention; that these Letters Patent were surrendered for good and lawful cause, and new Letters Patent obtained on the 18th day of April, 1865, for the same invention. The answer denies that the said several patents were surrendered for good and lawful cause, and avers that "they were surrendered, that the said Bailey and others, the patentees, might claim a monopoly of things invented

and known before the said John Allender made the improved *roller* described and claimed in the original patent; things which neither the said John Allender, or any one in his life-time ever pretended, were invented by him, and for the purpose, also, of so expanding the claim in said patent, that they might cover or embrace all other inventions or devices which have been, or may be made, to effect the same purpose."

The complainant took no exception to the answer, but filed the general replication, which put in issue the truth of all the matters alleged. The sufficiency of those matters, to bar the complainant's suit, is another question.

The issue is distinctly presented by the complainant itself, whether the several patents were inoperative or invalid, or, in other words, whether each correctly described and fully covered Allender's invention; and it is indispensible that the Court should examine and determine the extent of the invention, and whether it was secured by the original patent; for if it *was*, the patent was not lawfully surrendered.

The issue is also distinctly presented, whether the patent was surrendered to cover more than the invention; and to determine this, the Court must construe the claims of the amended specification; and in doing this, it is competent to inquire into the state of the art existing at the time of the alleged invention—that is, before the date of the patent—as there is no evidence of the date of the invention or of the application—the presumption arising from the patent, that Allender "was the original and first inventor, extends back only to the date of the patent."

Wing v. Richardson, 2 Clifford, 450.

And evidence of this character necessarily and properly bears upon the originality of that which is embraced in the terms of the claims.

Mr. Curtis, in his Treatise on the law of Patents, says, in referring to the sources to which the Court is entitled to resort in construing a claim, § 455, p. 498: "But it may be uncertain, upon the terms of the descriptive parts of the specification, if unaided by

evidence, what the precise extent of the invention was; and this may happen, without that degree and kind of ambiguity which renders a patent void for uncertainty, or because the directions could not be carried out by a competent workman," * * * " or, his invention may be so stated, as to render it doubtful whether he has invented or discovered the general application of a principle to produce a particular effect, and is therefore entitled to claim all the forms in which the same principle can be applied to produce the same effect, or, whether he has only invented or discovered a form of giving effect to a principle, the application of which was known before. So, too, on the general description of a machine, or a manufacture, which, as a whole, may be new, it may be uncertain whether the party invented the various parts of which that whole is composed, or only invented the combined whole, as he has produced it; and, if the latter, whether he invented the whole, as it may embrace all the forms and dimensions in which that whole can be produced, or, whether his claim is to be confined to certain forms and dimensions, there being other wholes, of the same general character, of other forms and dimensions, which it does not include."

"Section 456, p. 499. In such cases, the character and scope of the invention can only be ascertained by attending to what the evidence shows is new or old; to the state of the art; to the fact, of whether the principle which the patentee has employed, had been discovered and applied before; and, therefore, that he could have invented only a new form of the application, or, whether he has invented the application of the principle itself, and, consequently, is entitled, if he has not restricted himself, to claim the same application of the same principle, under other forms or dimensions, or by other means, than those which he has specifically described. The question, whether he has limited himself to particular forms, dimensions or methods, necessarily involves an inquiry into the substance and essence of his invention. In other words, before it can be ascertained, in doubtful cases, what he has claimed, some attention must be paid to his actual invention, as ascertained on the evidence."

The testimony, therefore, relating to Jessop's invention, and Underhill's invention, and the Letters Patent for the same, was pertinent

to the enquiry, and admissible — unless it should be excluded on other grounds. It was insisted that matters affecting originality, must be set out in the answer. That is undoubtedly true in cases where the bill is filed in a Circuit Court of the United States, for relief against *infringements* of Letters Patent—in those Courts, exclusive jurisdiction on that subject is vested by the laws of the United States—its proceedings and practice are regulated by the Acts of Congress, one of which (§ 15, of the Act of 1836, chap. 136,) provides that in any action for *damages* for *infringing* Letters Patent, in which the defendant relies in his defence, on the fact of a previous invention, knowledge or use of the thing patented, he shall give notice, and state in his notice, of special matter, the names and places of residence of those whom he intends to prove to have possessed a prior knowledge of the thing, and where the same had been used."

And we concede that the rule applies also to proceedings in equity, in cases of *infringement*; but this case does not come within that rule.

It is true that it is pending in the Courts of the United States, but it is not because of exclusive, or of any special jurisdiction over the subject matter, but because of the citizenship of parties. And the Courts of Massachusetts have equally, with the Circuit Court, jurisdiction over this cause—it will hardly be said that if the case was before the Courts of Massachusetts, the defendants would be precluded from offering evidence tending to sustain their defence because they had not complied with the Act of Congress, regulating the proceedings in the United States Courts in suits for infringements.

Again, this testimony is offered, and tends to show the state of the art at or before the invention by Allender, and, therefore, "no notice is necessary to justify the admission of evidence on behalf of the defendant, to show the improvements existing at the date of the complainant's invention, in the class of articles to which it belongs."

Vance v. Campbell, 1 Black (S. C. U. S.) 427.

It is also denied in the answer that the defendants have ever made

any machine containing any invention or improvement made by said Allender, described or claimed in any patent granted to him, or said complainant's assignors, or either of them, and averred that the machines made by the defendant corporation are wholly unlike the machines or improvement described, or claimed, in any patent owned by said complainant, in form, construction, mode of operation and principle, in each and every part thereof. No exception was taken to this, and the replication puts it in issue. The testimony of the experts for defendants, upon the matters so stated, is relevant and competent to prove them. And if the Court shall construe the indenture according to the intention of the parties, it will be of vital importance to determine whether the complainants *are* the owners of Letters Patent which are valid to secure to them any invention made by John Allender, represented or contained in the machine made by the defendant corporation. In doing this, it is necessary to define the limits of the patent, and to adjudge whether any part of the invention it secures is embraced in the defendant's machine, or passed to them by the grant.

No other evidence than the recitals of the indenture itself will be required to show that the promises of the indenture were made upon the sole consideration that the complainant was conferring, and the Eureka Company was receiving, a valuable grant or privilege. In this they were mistaken and deceived.

Depo. S. B. Rindge, p. 67, ans. to cross-int. 62.

And if this appears by the testimony in the case, the Court will reform the contract so as to make it conformable to the precise intent of the parties, although the facts upon which relief be grounded may be inartificially set up in the answer, instead of a cross-bill.

The principles applicable to this class of cases, are stated, in the opinion of this Court, in the case of Bradford against the Bank of Tennessee, 13 *Howard*, p. 57, from which we quote, as follows:—"One of the most common classes of cases," says "*Judge Story*, in his Commentaries on Equity Jurisprudence, "in which relief is sought in equity on account of a mistake "of facts, is that of written agreements, either executory or ex-

"ecuted. Sometimes, by mistake, the written agreement con-
"tains less than the parties intended; sometimes it contains more,
"and sometimes it simply varies from their intent, by expressing
"something different in substance from the truth of that intent. In
"all such cases, if the mistake is clearly made out by proofs entirely
"satisfactory, equity will reform the contract, so as to make it con-
"formable to the precise intent of the parties. 1 *Story's Equity*
"*Jurisprudence*, § 152."

"And this ground, it is agreed, is available to a defendant by way
"of defence, in the answer to a bill for a specific performance; as
"he may thus insist upon any matter which shows it to be inequi-
"table to grant the relief prayed for. The Court will not interpose
"to compel a specific execution, when it would be against conscience
"and justice to do so. 1 *Story's Equity Jurisprudence*, § 174; 2
"Ibid, 80."

"These principles have become elementary, and it is needless to
"refer to further authorities to sustain them."

"The more modern course of proceeding is to dispense with a
"cross-bill, and make the same decree upon the answer to the orig-
"inal bill that would be made if a cross-bill had been filed, if the
"defendant submits in his answer to a performance of the real
"agreement between the parties. The answer is viewed in the
"light of a cross-bill, and becomes the foundation for a proper de-
"cree by the Court. This practice has been adopted as most con-
"venient and expeditious in settling definitively the rights of the
"parties, and for the sake of saving further litigation and expense."

"We shall adopt this practice in the disposition of this case, as it
"will save all further litigation and expense, and settle the rights of
"the parties, as in our judgment the principles of equity and
"justice demand."

It is not deemed necessary to allude to Exhibit B, which will be invoked by the complainants to aid in making up a consideration to sustain the defendant's promise. It is manifest that all the benefits contemplated or secured to either of the parties by that instrument, accrued to the Bailey W. and W. M. Co., the only purpose and effect of that indenture being to subject the prices of the de-

fendant's machine to the dictation of the Bailey Co. This instrument, Exhibit B, must stand or fall with its consort, Exhibit A.

The fallacy of the theory by which the complainant attempts to bring the defendant's machine within the "reissued patent" as an infringment, is strikingly exposed by a single sentence from the opinion of this Court in the case of Jones *v.* Morehead, 1 *Wallace*, p. 164, viz: "It is clear that no part of the patent which is valid has been used by the defendants, and they cannot be made infringers by an argument that mingles the valid and invalid parts of a patent, and calls it a unit, and then claims that defendants are infringers because they have used one part of this unit, although it was a part as to which the patent is void."

Respectfully submitted,

JAMES B. ROBB,

Counsel for Appellant.

Supreme Court of the United States.

IN EQUITY.

EUREKA CLOTHES WRINGING MACHINE CO.,

APPELLANTS,

vs.

BAILEY WASHING AND WRINGING MACHINE CO.

[*Appeal from the Circuit Court of the United States for the District of Massachusetts.*]

BRIEF FOR ~~PLAINTIFFS~~ appellees.

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